



Minutes

Maryland State Commission on Criminal Sentencing Policy
Judiciary Education and Conference Center
Annapolis, MD 21401
July 9, 2019

Commission Members in Attendance:

Honorable Shannon E. Avery, Vice-Chair
Senator Robert G. Cassilly
William M. Davis, Esquire, *representing Public Defender Paul DeWolfe*
Barbara Dorsey Domer
Richard A. Finci, Esquire
Secretary Robert L. Green
Senator Delores G. Kelley
Honorable Patrice E. Lewis
Kathleen C. Murphy, Esquire, *representing Attorney General Brian E. Frosh*
Honorable James P. Salmon
Delegate Charles E. Sydnor III

Staff Members in Attendance:

Sarah Bowles
Stacy Najaka, Ph.D.
Katharine Pembroke
David Soulé, Ph.D.
Molly Triece

Visitors: Delegate Curtis A. Anderson; Claire Rossmark, Department of Legislative Services

1. Call to order

MSCCSP Vice-Chair, Judge Avery, called the meeting to order.

2. Roll call and declaration of quorum

The meeting began at 5:34 pm when attendance reached a quorum. Judge Avery announced that she would lead the meeting, as the MSCCSP's Chair, Judge Glenn T. Harrell, Jr., was not able to attend. She noted that Judge Harrell's term with the Commission officially ended on June 30, 2019, and she wanted to recognize his many contributions to the MSCCSP over the past four years.

Judge Avery stated that Judge Harrell's leadership of the MSCCSP has been exemplary and that his calming guidance has been greatly appreciated over the past four years as the Commission tackled several important tasks including: 1) the adoption of revisions to the sentencing matrix for drug offenders; 2) completion of a review of the potential for using risk assessment at sentencing; 3) completion of a Justice Reinvestment Act (JRA)-mandated



study on alternatives to incarceration and a corresponding expansion of guidelines-compliant corrections options; and 4) the adoption of a revised guidelines scoring system to more fairly account for an offender's juvenile record. She further noted that Judge Harrell was recently appointed as a member of the University of Maryland Medical System Board and wished him well in his new endeavors. A plaque will be delivered to Judge Harrell in recognition for his service as Chair of the MSCCSP.

Senator Kelley further praised Judge Harrell's leadership over the past four years, and specifically noted his ability to mediate difficult discussions and bring people together.

Next, Dr. Soulé acknowledged Delegate Anderson and announced that his term with the Commission also expired on June 30, 2019. Dr. Soulé thanked Delegate Anderson for his 16 years of service and presented him with a plaque in recognition of his service.

3. Introduction of new Commissioner: Delegate Charles E. Sydnor III

Delegate Anderson introduced a fellow colleague and new Commission member, Delegate Charles E. Sydnor III. Dr. Soulé and the Commissioners welcomed Delegate Sydnor..

4. Approval of minutes from the May 7, 2019 MSCCSP business meeting

The Commission approved the minutes as submitted.

5. Guidelines Subcommittee Report – Dr. David Soulé

Judge Avery stated that Dr. Soulé would present the Guidelines Subcommittee Report. Dr. Soulé noted that the Guidelines Subcommittee met via teleconference on June 25, 2019. All four Subcommittee members participated in the teleconference. The Subcommittee reviewed three issues.

a. Continued review of instructions for scoring Part A of the Offender Score for multiple criminal offense sentencing events (Action item)

Dr. Soulé referred Commissioners to the corresponding memorandum, *Review of Instructions for Scoring Part A of the Offender Score for Multiple Criminal Offense Sentencing Events*. Dr. Soulé noted that this agenda item revisits the instructions for scoring part A of the offender score for multiple criminal offense sentencing events. Part A of the offender score captures the defendant's relationship to the criminal justice system (CJS) when the instant offense occurred.

Dr. Soulé noted that the Guidelines Subcommittee, at its April 2019 meeting, considered the following question:

When a sentencing event involves two or more criminal offenses, and when the defendant was under CJS supervision when one offense occurred but not when the other offense occurred, should the defendant receive one point for part A of the offender score?



The current instructions reference the phrase “when the instant offense occurred”, but do not provide guidance for a scenario in which multiple offenses are being sentenced together and CJS supervision differs across the offenses.

Dr. Soulé noted that, while it is not known how many sentencing events involve criminal offenses with differing CJS supervision, 2.3% of sentencing events involve multiple criminal offense dates and are scored with one point on part A of the offender score. Dr. Soulé noted that this statistic was requested at the May 7 MSCCSP meeting.

At the May meeting of the full Commission, the Subcommittee presented to the Commission for their consideration two options to revise part A of the offender score. Following considerable discussion, the Commission voted to table the issue until the July meeting. At the time, it was noted that two of the four Subcommittee members were unable to attend the Commission meeting and that it would be good to have their input. It was also noted that tabling the issue would provide the Subcommittee an opportunity to consider additional options and the associated costs of reprogramming MAGS.

Dr. Soulé indicated that the Guidelines Subcommittee discussed multiple options to address part A of the offender score during the June teleconference. The Guidelines Subcommittee unanimously voted to present to the full Commission the following recommendation:

For sentencing events involving more than one instant offense, allow for 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.

The Guidelines Subcommittee agreed that this option offers the fairest outcome to both the defendant and the State and most accurately reflects the defendant’s status at the time each offense was committed.

Dr. Soulé noted that starting at the bottom of page 3 and continuing on to page 4 of the memorandum, an example is provided of how the guidelines would be calculated utilizing the current guidance provided in the MSGM, Sample Case 6 and Sample Case 7, versus how the guidelines would be calculated under the proposed revised instructions. In this example, the defendant is convicted of two offenses: Felony theft or theft scheme, at least \$1,500 but less than \$25,000 (date of offense: December 10, 2017) and Felony theft or theft scheme, at least \$1,500 but less than \$25,000 (date of offense: December 1, 2018). The defendant began a two-year period of probation on January 1, 2018 and, therefore, was in the CJS when the second offense was committed, but not when the first offense was committed. The two offenses are scheduled to be sentenced together, in front of the same judge, on June 20, 2019. The table on page 4 illustrates the difference in guidelines based on the application of one point to part A of the offender score.

Dr. Soulé noted that this proposed revision would require reprogramming MAGS to allow for part A of the offender score to differ across offenses. Dr. Soulé stated that since the Subcommittee met, Kevin Combs, the Director of the Information Technology and



Communications Division (ITCD) of the Department of Public Safety and Correctional Services (DPSCS), informed staff that ITCD will be able to support the programming costs associated with the revisions. DPSCS estimates that work on the programming could begin in late September/October, assuming the Commission votes to adopt the revisions.

Dr. Soulé acknowledged the DPSCS Secretary, Robert Green and thanked the DPSCS for all of their support for MAGS since it was first deployed as a pilot application in 2012. Judge Avery also expressed her appreciation for the continued support and collaboration with the DPSCS.

Dr. Soulé noted that, prior to receiving this agreement of support from the DPSCS, the Guidelines Subcommittee had recommended presenting the associated programming costs to request an amendment to the Commission's fiscal year 2020 budget. Senator Kelley offered her support as a legislator, and Judge Avery and Mr. DeLeonardo offered to seek the support of the Maryland Judiciary and the Maryland State's Attorneys' Association, respectively. While it would not now be necessary to seek a budget amendment for this specific programming request, Dr. Soulé noted that it would make sense for the Commission to continue to seek a budget increase to support a permanent, dedicated funding source to support MAGS programming changes going forward. Dr. Soulé noted that the staff has submitted this request the last two fiscal years and both requests were denied. In the future, it might be beneficial to submit the request again, and to also ask the Legislature, the Judiciary, and the MDSAA to offer their support for a full-time dedicated funding source for MAGS, as opposed to a piece-meal approach to support specific programming changes.

Dr. Soulé referred Commissioners to the associated revisions to the MSGM and COMAR, as detailed beginning on page 5 of the memorandum. Dr. Soulé presented these revisions as the unanimous recommendation of the Guidelines Subcommittee.

Senator Cassilly asked why a defendant receives one point for being under CJS supervision at the time of the instant offense. Senator Cassilly expressed concern that awarding one point for being under CJS supervision at the time of one instant offense, but not the other offense, would unjustly award a defendant who commits multiple crimes in quick succession while penalizing a defendant who waits a period of time to commit a subsequent crime.

Dr. Soulé replied that, at the time the sentencing guidelines were developed, CJS supervision was identified as a significant factor judges consider when sentencing defendants. Judge Avery and Judge Lewis agreed that the defendant's CJS supervision status is a factor judges take into account when sentencing. Mr. Davis noted that a defendant who commits a rapid succession of crimes has not yet been presented with the rehabilitative opportunities that come with sentencing, while the defendant who commits one offense while under CJS supervision and the other while not under CJS supervision has been offered these opportunities. Judge Lewis concurred that the opportunities offered to a defendant during previous periods of CJS supervision are a significant factor



in making sentencing decisions and, in particular, in deciding the length of incarceration and probation.

Senator Kelley made a motion to adopt the Guidelines Subcommittee's recommendation concerning the application of one point to part A of the offender score. Judge Lewis seconded the motion.

The Commission unanimously voted to adopt the revised language concerning part A of the offender score.

b. Proposed classification of new/revised offenses, 2019 Legislative Session (Action item)

Dr. Soulé noted that, at its June meeting, the Guidelines Subcommittee reviewed the proposed classification of new/revised offenses from the 2019 Legislative Session. Dr. Soulé summarized the process the Commission traditionally follows to classify new and revised offenses. The staff reviews all legislation from the most recent Legislative Session and prepares a memorandum that identifies any new or revised criminal offenses that carry a maximum penalty of greater than one year of incarceration. The related memorandum focuses on offenses with maximum penalties of greater than one year because, by rule, the MSCCSP does not require the classification of offenses that carry a maximum penalty of one year or less. Rather, these offenses are automatically assigned a seriousness category of VII. The task of classifying new and revised criminal offenses is designated to the Guidelines Subcommittee. The Guidelines Subcommittee's recommended classifications are then presented to the Commission for review and consideration for adoption. Seriousness category classification recommendations for new and revised offenses are made by examining currently classified offenses that are comparable based on the following characteristics: (1) type of offense (person, drug, or property); (2) statutory maximum; (3) misdemeanor/felony classification; and (4) nature of the offense (when possible).

Dr. Soulé referred the Commission to the memorandum, *Proposed Classification of New/ Revised Offenses, 2019 Legislative Session*. Dr. Soulé noted that this memorandum is divided roughly into 3 sections (New Offenses, Changes to Existing Offenses, and Changes to Existing Offenses-No action recommended). Staff also provided an additional supporting document to help guide the classification of the new and revised offenses. This document, *Combined file of legislation with new_revised offenses 2019*, is a PDF that contains all of the bills that are reviewed in the *Proposed Classification* memorandum.

- i. Chapters 23 and 24 (HB 734/SB 689) – Labor Trafficking – Taking, placing, etc., another by force, fraud, or coercion to provide services or labor; benefiting from services or labor induced by force, fraud, or coercion; aiding or conspiring with another to commit these offenses (CR, § 3-1202).



Chapters 23 and 24 (HB 734/ SB 689), the Anti-Exploitation Act of 2019, create a new offense prohibiting a person from knowingly taking, placing, harboring, persuading, inducing, or enticing another by force, fraud, or coercion to provide services or labor, or benefiting from services or labor induced by force, fraud, or coercion, or aiding or conspiring with another to commit these offenses. Dr. Soulé noted that this was the only offense the Guidelines Subcommittee reviewed and did not unanimously agree on the staff's proposed classification.

Mr. Finci noted that he was the sole Guidelines Subcommittee member to raise concern with the seriousness category II classification. Mr. Finci indicated that he objected to classifying the offense as a seriousness category II, as that classification would place labor trafficking in the same seriousness category as sex trafficking of a minor, which, in his opinion, is a more serious offense. Judge Avery, Judge Lewis, and Senator Kelley noted that labor trafficking is another term for slavery. Victims are often held for long periods of time before discovery, and they are subject to cruel and inhumane conditions. Offenders often take advantage of victims' language and cultural barriers to prevent their release. Judge Avery, Judge Lewis, and Senator Kelley agreed that the nature of the offense, in combination with the statutory maximum proscribed by the legislature, support the recommended seriousness category II classification.

The Commission adopted the Guidelines Subcommittee's recommendation to classify the offense as a person offense with a seriousness category of II, with one member in opposition.

- ii. Chapter 54 (HB 787) – Abuse and Other Offensive Conduct – Knowingly fail to provide the required notice or make the required written report of suspected abuse or neglect of a child (CR, § 3-602.2).

Chapter 54 (HB 787) creates a new offense prohibiting a person from knowingly failing to provide the required notice or make the required written report of suspected abuse or neglect of a child under § 5-704 of the Family Law Article.

The Commission adopted the Guidelines Subcommittee's recommendation to classify the offense as a person offense with a seriousness category of VI, without opposition.

- iii. Chapter 20 (HB 707) makes a number of revisions to the State's drunk and drugged driving laws. Chapter 20 increases the penalty for 4th and subsequent drunk and drugged driving offenses and all drunk and drugged driving offenses if the person has previously been convicted of negligent homicide or injury by motor vehicle or vessel while under the influence of alcohol, while impaired by alcohol, while impaired by drugs, or while impaired by a controlled dangerous substance (CDS); eliminates the individual penalties for all 3rd and subsequent drunk and drugged driving offenses and collapses them into a single penalty; increases the penalties for certain 1st and 2nd drunk and drugged driving offenses;



and increases the penalties for negligent homicide by motor vehicle or vessel while impaired by drugs.

- a. Chapter 20 (HB 707) – Motor Vehicle Offense – Driving while under the influence of alcohol, impaired by alcohol, impaired by drugs or drugs and alcohol, or impaired by CDS; driving while under the influence or impaired while transporting a minor—4th or subsequent offense, or previous conviction for negligent homicide or injury by motor vehicle or vessel while under the influence or impaired (TR, § 21-902(i))

In response to the Guidelines Subcommittee’s recommendation to classify the offense with a seriousness category IV, Senator Cassilly noted that the legislature created this offense in response to public outrage over repeat drunk driving offenders. Senator Cassilly noted that while this offense requires only one prior negligent homicide by motor vehicle or vessel conviction or three prior drunk and drugged driving convictions, it is only by chance the offender did not kill multiple individuals during the course of their previous drunk and drugged driving offenses. Therefore, Senator Cassilly suggested that this offense should be distinguished from the comparable offenses provided in the memorandum (i.e., negligent homicide by motor vehicle or vessel while under the influence of alcohol, subsequent, and fleeing or eluding police that results in death of another person), all of which provide for a 10-year statutory maximum and seriousness category IV classification. Rather, Senator Cassilly suggested that the offense be classified as a seriousness category III.

Judge Avery noted that the legislature assigned the offense a 10-year maximum incarceration penalty. Currently, no offense with a 10-year penalty is classified with a seriousness category III. Therefore, there would be no precedent to classify this offense as more serious than a category IV.

The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offense as a person offense with a seriousness category of IV, without opposition.

- b. Chapter 20 (HB 707) – Motor Vehicle Offense – Driving while under the influence of alcohol, impaired by alcohol, impaired by drugs or drugs and alcohol, or impaired by CDS; driving while under the influence or impaired while transporting a minor—3rd offense (TR, § 21-902(h))

The Commission adopted the Guidelines Subcommittee’s recommendation to retain the offense as a person offense with a seriousness category of V, without opposition.



- c. Chapter 20 (HB 707) – Motor Vehicle Offense – Driving while impaired by alcohol, while transporting a minor, 1st offense (TR, § 21-902(b)(2)(ii)(1))

The Commission adopted the Guidelines Subcommittee’s recommendation to retain the offense as a person offense with a seriousness category of VII, without opposition.

- d. Chapter 20 (HB 707) – Motor Vehicle Offense – Driving while impaired by drugs or drugs and alcohol, while transporting a minor, 1st offense (TR, § 21-902(c)(2)(ii)(1))

The Commission adopted the Guidelines Subcommittee’s recommendation to retain the offense as a person offense with a seriousness category of VII, without opposition.

- e. Chapter 20 (HB 707) – Motor Vehicle Offense – Driving while impaired by alcohol, while transporting a minor, 2nd offense (TR, § 21-902(b)(2)(ii)(2))

The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offense as a person offense with a seriousness category of VI, without opposition.

- f. Chapter 20 (HB 707) – Motor Vehicle Offense – Driving while impaired by drugs or drugs and alcohol, while transporting a minor, 2nd offense (TR, § 21-902(c)(2)(ii)(2))

The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offense as a person offense with a seriousness category of VI, without opposition.

- g. Chapter 20 (HB 707) – Motor Vehicle Offense – Negligent homicide by motor vehicle or vessel while impaired by drugs, 1st offense (CR, § 2-505(c)(1))

The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offense as a person offense with a seriousness category of V, without opposition.

- h. Chapter 20 (HB 707) – Motor Vehicle Offense – Negligent homicide by motor vehicle or vessel while impaired by drugs, subsequent (CR, § 2-505(c)(2))

The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offense as a person offense with a seriousness category of IV, without opposition.



iv. Chapters 26 and 27 (SB 103/HB 181), Grace’s Law 2.0, increases the penalty for the use of electronic communication to alarm or annoy another, or to distress a minor or place a minor in fear of death or bodily injury; alters prohibited actions relating to electronic harassment of minors; prohibits a person from maliciously engaging in an electronic communication if the electronic communication, as part of a series of communications, has the effect of intimidating or harassing a minor and causing physical injury or serious emotional distress to a minor and the person engaging in the electronic communication acts with a certain intent; and prohibits a person from violating the Act with the intent to induce a minor to commit suicide.

- a. Chapters 26 and 27 (SB 103/HB 181) – Telecommunications and Electronics, Crimes Involving – Use of electronic communication to alarm or annoy another (CR, § 3-805(b)(1); CR, § 3-805(e)(1)(penalty))

The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offense as a person offense with a seriousness category of VI, without opposition.

- b. Chapters 26 and 27 (SB 103/HB 181) – Telecommunications and Electronics, Crimes Involving – Use an interactive computer service to inflict emotional distress on a minor or place a minor in fear of death or serious bodily injury (CR, § 3-805(b)(2); CR, § 3-805(e)(1)(penalty))

The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offense as a person offense with a seriousness category of VI, without opposition.

- c. Chapters 26 and 27 (SB 103/HB 181) – Telecommunications and Electronics, Crimes Involving – Intentional use of electronic communication or conduct that has the effect of intimidating or harassing a minor and causing physical injury or serious emotional distress (CR, § 3-805(b)(3); CR, § 3-805(b)(4); CR, § 3-805(b)(5); CR, § 3-805(e)(1)(penalty))

The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offense as a person offense with a seriousness category of VI, without opposition.

- d. Chapters 26 and 27 (SB 103/HB 181) – Telecommunications and Electronics, Crimes Involving – Use of electronic communication to alarm or annoy another, etc., with the intent to induce a minor to commit suicide (CR, § 3-805(b)(6); CR, § 3-805(e)(2)(penalty))

The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offense as a person offense with a seriousness category of IV, without opposition.



v. Chapter 495 (SB 842) alters the penalty for certain conduct relating to betting, wagering, or gambling; makes certain conduct relating to betting, wagering, or gambling a civil offense; and establishes that adjudication of a violation under a certain provision of this Act is not a criminal conviction for any purpose and does not impose any of the civil disabilities that may result from a criminal conviction.

- a. Chapter 495 (SB 842) – Gambling – General Provisions – Gambling—Pools on horses, etc.; establishing, keeping, etc. a facility for betting, wagering, gambling, etc.; or receiving, becoming the depository of, etc. money or any other thing of value to be bet, wagered, or gambled (CR, § 12-102(b))

The Commission adopted the Guidelines Subcommittee’s recommendation to retain the offense as a property offense with a seriousness category of VII, without opposition.

- b. Chapter 495 (SB 842) – Gambling – General Provisions – Gambling—Betting, wagering, or gambling; or playing any other gaming device or fraudulent trick (CR, § 12-103)

By unanimous vote, the Commission adopted the Subcommittee’s recommendation to remove this offense from the Guidelines Offense Table, as the Legislature made it a civil offense.

vi. The Commission followed the recommendation of the Guidelines Subcommittee to take no action with respect to the offenses on pages 13 through 16 of the *Proposed Classification* memorandum. These were either new offenses that have a statutory maximum of one year or less, and by rule are classified as seriousness category VII unless the Commission decides otherwise, or existing offenses amended in ways that did not change the penalty structure of the offense or changed the penalty structure of the offense, but maintained a statutory maximum of one year or less. For the existing offenses amended in ways not substantively relevant to the sentencing guidelines, some non-substantive changes to COMAR 14.22.02.02 and the Guidelines Offense Table are nevertheless necessary (e.g., changes to subsection designations).

- a. Chapters 21 and 22 (HB 871/SB 690) – Human Trafficking—Sex trafficking, misdemeanor (CR, § 3-1102(c)(1))
- b. Chapters 21 and 22 (HB 871/SB 690) – Human Trafficking—Sex trafficking, felony (CR, § 3-1102(c)(2))
- c. Chapters 21 and 22 (HB 871/SB 690) – Human Trafficking—Forced marriage (CR, § 3-1103)
- d. Chapters 21 and 22 (HB 871/SB 690) – Prostitution and Related Crimes—Prostitution, etc. – General assignment, solicitation, and procurement;



- establishing, keeping, etc. a facility (CR, §11- 303(b); CR, §11- 306(b); CR, §11- 307(b))
- e. Chapters 28 and 29 (HB 240/SB 232) – Hate Crimes— Crimes against, or threatening to commit crimes against, persons, groups, or property because of race, color, religious beliefs, sexual orientation, gender, disability, national origin, or homelessness (CR, § 10-306(a)(penalty))
 - f. Chapters 28 and 29 (HB 240/SB 232) – Hate Crimes— Crimes against, or threatening to commit crimes against, persons, groups, or property because of race, color, religious beliefs, sexual orientation, gender, disability, national origin, or homelessness—involving separate felony (CR, § 10-304(2)(i); CR, § 10-306(b)(1)(penalty))
 - g. Chapters 28 and 29 (HB 240/SB 232) – Crimes against, or threatening to commit crimes against, persons, groups, or property because of race, color, religious beliefs, sexual orientation, gender, disability, national origin, or homelessness—resulting in death (CR, § 10-304(2)(ii); CR, § 10-306(b)(2)(penalty))
 - h. Chapter 247 (SB 198) – Murder – 1st degree generally (CR, § 2-201)
 - i. Chapter 365 (HB 481) – Abuse and Other Offensive Conduct – Sell, barter, trade, etc. a child for money, property, etc. (CR, § 3-603)
- c. Proposed classification for previously unclassified offense: scrap tire disposal (**Action item**)

Dr. Soulé referred the Commission to the memorandum, *Proposed Classification of Unlawful Disposal of Scrap Tires*, and noted that the Office of the Attorney General alerted the MSCCSP staff to an environmental-related offense that had not yet been classified for guidelines calculation purposes. The Guidelines Subcommittee, at its June 25 meeting, reviewed the classification of this offense, *Unlawfully disposing of scrap tires for monetary or financial gain by any means other than through a licensed scrap tire hauler or by delivering the tires to an approved facility*, (EN, § 9-228(f)(2); Penalty (EN, § 9-268.1(a)(2)). The offense carries a 5-year maximum incarceration penalty and/or up to a \$25,000 fine. Based on the comparable offenses identified on the second page of the memorandum, the Guidelines Subcommittee recommended classifying this offense as a property offense with a seriousness category of VI.

The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offense as a property offense with a seriousness category of VI, without opposition.



6. Executive Director Report – Dr. David Soulé

a. Revised Policy for the MSCCSP response to legislative proposals (Action item)

Dr. Soulé referred the Commission to the memorandum, *Revised Policy for the MSCCSP Response to Legislative Proposals*. Dr. Soulé stated that during the past two legislative sessions, multiple bills with the potential to affect the MSCCSP have been introduced. Given that the Commission does not meet typically during the legislative session, the position of Commission members had to be determined via an email poll. Accordingly, at the conclusion of this year's legislative session, Judge Harrell requested that the staff draft a formal policy to guide future responses to legislation. The Commission members discussed a formal policy at the May 7, 2019, MSCCSP meeting, and after considerable debate, Judge Harrell asked the staff to revise the proposal to accommodate the various feedback provided by Commissioners. Dr. Soulé noted that the memo reflects revisions discussed at the May 7, 2019, MSCCSP meeting. However, Dr. Soulé noted that the memo may need to be further revised following input that was provided by Commissioner KC Murphy. Ms. Murphy stated that the policy discussed at the May meeting may violate the Open Meetings Act by asking Commissioners for feedback on legislation via email. Ms. Murphy noted a complaint filed in Talbot County that alleged the Talbot County Council violated the Open Meetings Act when members discussed the Council's position on certain legislation via text and email. The Compliance Board concluded that the Council violated the Act when it did not provide the public with an opportunity to observe its deliberations on legislation pending in the General Assembly.

To ensure compliance with the Open Meetings Act, *The Policy for the MSCCSP Response to Legislative Proposals* was further revised to the following:

1. The MSCCSP staff shall identify and review, as soon as possible, legislative proposals that will affect the sentencing guidelines and/or the MSCCSP's operations.
2. The staff shall notify promptly the MSCCSP Chair of such proposals and the bills' hearing dates before the relevant legislative committees, when known.
3. The MSCCSP Chair and/or MSCCSP staff will schedule a conference call for the purpose of soliciting feedback and to request a vote whether to support (with or without amendments), oppose, or take no position on the proposed legislation. The MSCCSP will provide prompt notice of the scheduled date and time for the conference call and will offer public access to the teleconference by publishing a call-in number on the MSCCSP website. Furthermore, the MSCCSP website shall include a notice that the Commission may need to meet on short notice when the General Assembly is in session.
4. The MSCCSP will adopt the majority position of the voting Commission members, provided that a quorum of Commission members participates in the conference call.
5. The MSCCSP Chair and the Sentencing Guidelines Subcommittee shall convene timely (via teleconference, email, or in-person) to consider relevant bills after receiving feedback from the full Commission.



6. The MSCCSP Chair and Sentencing Guidelines Subcommittee will decide whether it is necessary, and if so, present to the legislative committees, legislative leadership, and/or Governor, as relevant, the position of the Commission.
7. The MSCCSP staff, in conjunction with the MSCCSP Chair and the Sentencing Guidelines Subcommittee, will prepare formal testimony for relevant Senate and House bill hearings.

Delegate Sydnor asked if the Guidelines Subcommittee meetings were also subject to the Open Meetings Act. Dr. Najaka confirmed the Guidelines Subcommittee meetings are not subject to the Open Meetings Act because they do not represent the full Commission.

b. HB 542 (2019) – Task Force to Study Crime Classification and Penalties (Status report)

Dr. Soulé reported on the Task Force to Study Crime Classification and Penalties, established by House Bill 342 of the 2019 legislative session. Dr. Soulé stated his interpretation that the Task Force was created with the primary intention of addressing the inconsistencies that exist in the Maryland criminal code and to consider whether Maryland, similar to other states, should adopt a classification system for felonies and misdemeanors. Dr. Soulé noted that HB 542 appoints the MSCCSP Executive Director to the Task Force, therefore he will plan to regularly update the Commission on the work of the Task Force. Senator Cassilly inquired as to the task force's activities and membership to date. Dr. Soulé stated that he was not aware of any activities. Dr. Soulé noted that, to date, three senators had been appointed to the Task Force (Senator Hough, Senator Waldstreicher, and Senator Washington)

c. Release of MAGS 8.0 and MSGM 11.0 (Status report)

Dr. Soulé reported that on July 1, 2019, the MSCCSP released MAGS 8.0. MAGS 8.0 offers several updates including, but not limited to:

- i. Modified race categories on the *Offender Information* screen to mirror those required by State Government (SG) Article, § 10-603, and to allow for multiracial responses.
- ii. A revised *Offense/Offense Score* screen to provide clarifying instructions regarding the application of the multiple victim stacking rule (MVSR) and to allow the MVSR to be applied in sentencing events involving multiple criminal events.
- iii. *Reconsiderations* (for crimes of violence as defined under § 14–101 of the Criminal Law Article) and *three-judge panel reviews* are now separated from the other disposition types. Separating out reconsiderations and reviews allows users to indicate both how the case was disposed (plea or trial) as well as whether or not the sentencing was a reconsideration or review.
- iv. The *Corrections Options* field has been moved from the *GLS/Overall Sentence* screen to a new *Alternatives to Incarceration* screen. The *Alternatives to Incarceration* screen was created to collect additional sentence information,



specifically the use of various corrections options programs and other alternatives to incarceration.

Each of these updates were approved by the MSCCSP at previous MSCCSP meetings in 2018. The revisions took effect on July 1, corresponding with the adoption date for the latest round of COMAR revisions. Dr. Soulé noted that there is a *What's New in MAGS 8.0* document available on the MSCCSP website, which describes these updates in greater detail. It was also distributed via email to MAGS users on July 1, 2019.

Dr. Soulé reported that on July 1, 2019, the MSCCSP also released an updated version of the MSGM, version 11.0. MSGM 11.0 includes the following updates:

- i. Clarifying language regarding the scope of the Maryland sentencing guidelines, specifically to exclude from guidelines coverage cases adjudicated in a juvenile court.
- ii. An expanded definition of corrections options to include all problem-solving courts, work release, weekend (or other discontinuous) incarceration, and other clarifying language. Expanding the scope of corrections options is important because it allows a judge to impose these specific alternatives in lieu of an imprisonment sentence while remaining compliant with the sentencing guidelines.
- iii. MSGM 11.0 also reflects revisions to the Maryland sentencing guidelines worksheet, including some of the previously referenced MAGS updates, such as separation of *Reconsideration* and *Review* from the other disposition types; the modified race categories that mirror those required by State Government (SG) Article, § 10-603 and allow for multiracial responses; additional options to select under corrections options; and the addition of other alternatives to incarceration.

Dr. Soulé reported that the Guidelines E-News, Volume 14, Issue 1 was distributed on July 1, 2019, to detail all of the various MSGM 11.0 updates.

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

Dr. Soulé reported that, since the last MSCCSP meeting in May 2019, he met with the judges and court staff from the Circuit Court for Baltimore City to continue discussions in preparation for the planned deployment of MAGS in Baltimore City on October 1, 2019. Dr. Soulé reported that he also met with the two newest Commissioners, Delegate Clippinger and Delegate Sydnor on separate occasions to provide an orientation to the activities of the MSCCSP.

7. Date, Time, and location for remaining 2019 meetings

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

September 17, 2019, 5:30 pm, Judicial College Education and Conference Center
December 10, 2019, 5:00 pm, House of Delegates Office Building



9. Old Business

None.

10. New business and announcements

None.

The meeting adjourned at 7:03 pm.