Minutes

Maryland State Commission on Criminal Sentencing Policy
House Office Building
Annapolis, MD 21401
December 11, 2017

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

Staff Members in Attendance:
Sarah Bowles
Jennifer Lafferty
Stacy Najaka, Ph.D.
Katharine Pembroke
David Soulé, Ph.D.

Visitors:
Linda Forsyth, Chief of Staff for Senator Kelley; Claire Rossmark, Department of Legislative Services; Genavieve Shipley, Legislative Director for Senator Cassilly; Holly Vandegrift, Assistant to Delegate Vallario; Webster Ye, Maryland Department of Health

1. Call to order

Judge Harrell called the meeting to order.

2. Roll call and declaration of quorum

The meeting began at 7:08 pm when attendance reached a quorum.

3. Approval of minutes from the September 19, 2017, MSCCSP meeting

Mr. Davis noted that he had one correction to make to the September 19, 2017, minutes. Mr. Davis stated that during the September 19 meeting, he had suggested that the Commission

postpone voting on issues pertaining to the juvenile delinquency score until after the Public Comments Hearing, however this suggestion was not reflected in the minutes. Mr. Davis further stated that he did not recall whether a vote was taken on the matter. Judge Harrell responded that the Commission had voted on each of the motions pertaining to the juvenile delinquency score. Mr. Davis replied that he understood, but that he believes it is important for the minutes to reflect that he had asked for voting to be postponed until after the Public Comments Hearing.

Dr. Soulé stated that there is an audio recording of the meeting and advised that staff will review the recording and revise the minutes accordingly. Judge Harrell stated that the amendment is subject to verification from the recordings, and asked Mr. Davis if he had made a motion. Mr. Davis replied that he did not remember if he formally made a motion. Judge Harrell stated that if mention was made of possibly deferring any votes on the four matters that were before the Commission at the time, it was either voted on and denied, or by implication, since each of the four motions were passed, it was denied.

Mr. DeLeonardo stated that it was his recollection that Mr. Davis suggested that voting be postponed, but that Mr. Davis never made a motion on the matter. Judge Harrell stated that the recording will speak for itself and the minutes will be amended accordingly.

Pending review of the recording, the minutes were approved without any further corrections or additions.

4. Guidelines Subcommittee Report – Judge Shannon Avery

a. Continued review of study on alternatives to incarceration

Judge Avery noted that, pursuant to Section 8 of the Justice Reinvestment Act (JRA) of 2016, the MSCCSP is required to submit to the Justice Reinvestment Oversight Board (JROB), the General Assembly, and the Governor, by January 1, 2018, a report with findings and recommendations from the Commission's study on alternatives to incarceration. Judge Avery noted that the report is on schedule to be submitted on time.

Judge Avery noted that the Commission reviewed the general recommendations to be included in the final report at its May 9, 2017, business meeting. The exact language for the recommendations was included in the memo distributed prior to the current meeting, *Update of Study on Alternatives to Incarceration*. Judge Avery reported that this language was addressed by the Guidelines Subcommittee at their December 4 meeting.

Judge Avery thanked Lamonte Cooke, Rachel Sessa, and Joe Clocker for their participation in the Subcommittee's discussions regarding the study on alternatives to incarceration and the Commission's recommendations.

Judge Avery noted that the policy statement that the report recommends be included in the Maryland Sentencing Guidelines Manual (MSGM) is detailed under recommendation #3 on p. 4 of the memo, *Update of Study on Alternatives to Incarceration*. Judge Avery reported that the Guidelines Subcommittee reviewed the statement prepared by the staff and unanimously agreed to the statement as it accurately reflects the Commission's role in providing recommendations regarding alternatives to incarceration. Judge Avery noted that the policy statement was the only recommendation from the report for which there was substantive discussion among the Subcommittee members.

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Judge Avery moved to adopt the seven recommendations detailed in the memo for inclusion in the MSCCSP's final report to the JROB, the General Assembly, and the Governor. Judge Avery noted that implicit in this motion is that the Commission will move forward with the execution of recommended actions one through four (i.e., to expand the definition of corrections options to include specified sentences with required substance abuse treatment as guidelines-compliant; to educate practitioners on guidelines-compliant sentences with respect to corrections options; to adopt a policy statement encouraging the use of alternatives to incarceration where appropriate; and to collect additional data on sentences utilizing alternatives to incarceration). Senator Kelley seconded the motion. The Commission voted unanimously to adopt the recommendations.

b. Points of clarification for newly adopted juvenile delinquency scoring component

Judge Avery referred the Commission to the memo, *Points of Clarification for Adjudications Only #2, the Newly Adopted Juvenile Delinquency Scoring Component of the Maryland Sentencing Guidelines*.

Judge Avery noted that it was brought to the staff's attention, following the adoption of Adjudications Only #2 as the new juvenile scoring component of the sentencing guidelines, that a finding of juvenile delinquency is a two-step process: (1) the finding of facts sustained, which occurs pursuant to an adjudicatory hearing; and (2) the youth's adjudication as delinquent, which occurs pursuant to a disposition hearing. Judge Avery noted that the staff's research concluded that 1-2% of youth with a finding of facts sustained are not subsequently adjudicated as delinquent. As such, the Guidelines Subcommittee recommends that the Commission adopt language put forth in the memo, *Points of Clarification for Adjudications Only #2*, to revise Chapters 2, 3.4 and 7.1 of the MSGM and corresponding sections in COMAR, section 14.22.01, to specify that the finding of a delinquent act will be based on a finding of facts sustained at an adjudicatory hearing. Further, if the defense or state can show that a finding of a delinquent act did not result in the youth's adjudication as delinquent, the finding of a delinquent act shall not be scored as part of the juvenile record. Judge Avery noted that this language would give benefit to the juvenile in the very rare occurrence that the finding of a delinquent act did not result in the youth's adjudication as delinquent.

Judge Avery made a motion to accept the proposed language contained in the memo, *Points of Clarification for Adjudications Only #2*. Mr. Davis expressed concern that the proposed language defines delinquency as facts sustained and places the burden on the defense to prove that the defendant was found facts sustained but not adjudicated delinquent. Mr. Davis noted that some magistrates will hold off on juvenile findings indefinitely.

Judge Avery confirmed Mr. Davis' interpretation of the proposed language and noted that anyone who prepares the guidelines worksheet, including the state, can bring to the attention of the judge if a juvenile was found facts sustained but not adjudicated delinquent.

Dr. Soulé noted that staff contacted the Department of Juvenile Services (DJS) to request statistics as to how often youth are found facts sustained but not adjudicated delinquent. DJS reported that approximately 2% of youth with facts sustained are not adjudicated

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delinquent. Dr. Soulé noted that the figure for the most recent fiscal year is less than 1%. Dr. Soulé additionally noted that practitioners indicated that it would not be possible to distinguish between facts sustained and adjudicated delinquent using DJS ASSIST, the system used by many practitioners to calculate the juvenile delinquency score. Dr. Soulé noted that it was his understanding that additional research would be necessary to distinguish between facts sustained and adjudicated delinquent. Dr. Soulé stated that these findings were the main impetus behind the proposed language.

Mr. Davis noted that it was his understanding that the Parole & Probation agent in charge of conducting the pre-sentence investigation (PSI) has the ability to look into the defendant's record and determine whether a youth was adjudicated delinquent. Mr. Davis further noted that it was agreed upon by the Commission that an adjudication as delinquent would be required to score a point on the juvenile delinquency score. Therefore, Mr. Davis questioned why the Parole & Probation agent would not be required to prove the juvenile delinquency score point and, further, why that burden would be placed on the defense.

Mr. Davis noted that there are several tenets to criminal justice. First, Mr. Davis noted, is that defendants are innocent until proven guilty, which means that the defense does not have to present any evidence, and that the state has the burden to prove that a defendant is guilty. Second, Mr. Davis noted, is the rule of lenity, which requires that any confusion be resolved to the benefit of the defendant. Mr. Davis noted that the proposed language is in contrast to these tenets. Mr. Davis further noted that, as Ms. Shapiro (Office of the Public Defender) stated during her testimony at the Public Comments Hearing (held prior to the business meeting), the defense has to file a motion with the juvenile court to obtain information from the defendant's juvenile record, whereas the Parole & Probation agent has immediate access to that information. Therefore, Mr. Davis asserted that the onus should be placed on the Parole & Probation agent or the state if they wish to count a juvenile adjudication in the calculation of the juvenile delinquency score.

Dr. Soulé noted that the feedback the Commission received from practitioners indicated that they would be able to determine juvenile delinquency based on facts sustained, but not on adjudicated delinquent. Dr. Soulé noted that it would not be possible to create a definition of juvenile delinquency using a finding that is not verifiable. Dr. Soulé additionally noted that the analyses performed to validate Adjudications Only #2 used facts sustained as the definition of delinquency.

Mr. Davis noted that to define juvenile delinquency as facts sustained is making an assumption about the 1% of individuals with facts sustained who are not adjudicated delinquent, and that assumption would be unfair to that 1% of individuals. Mr. Davis stated that this definition is unacceptable.

Judge Lewis noted that the presiding judicial officer is responsible for the record. Judge Lewis expressed that the current discussion seemed to be indicating that juvenile records are not consistently kept. Judge Lewis noted that juvenile delinquency is a two-step process. The first step is to determine whether the juvenile has committed an act that if committed by an adult would be a crime. Once that determination is made, there is a determination as to whether he or she is in need of treatment. Judge Lewis noted that there needs to be an effort to educate both the bench and the bar as to this process. Judge

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Lewis noted that there are other judicial procedures that involve a two-step process, for instance the process by which defendants are deemed incompetent. Judge Lewis further noted that the fact that the defendant's record does not clearly delineate the two-step delinquency process should not influence the definition of delinquency adopted by the Commission.

Judge Lewis noted that she agreed with Mr. Davis in that it is her experience that parties are not going to file a motion to open the juvenile record. Judge Lewis noted that, in her experience as a District Court judge, parties brought to her attention the juvenile record that was known to the State's Attorney, without filing any motions.

Judge Lewis suggested that the Commission note that there needs to be better record keeping and that juvenile delinquency is a two-step process.

Judge Harrell asked if there was a second to Judge Avery's motion to adopt the recommendation of the Guidelines Subcommittee pertaining to the proposed language to define juvenile delinquency. Ms. Martin seconded the motion.

Mr. Davis requested that the issue at hand be resolved prior to voting. Mr. Davis stated that the party advocating for the juvenile delinquency point should be responsible for proving its existence. Mr. Davis stated that he would like to make a motion to not accept the Guidelines Subcommittee's recommended language and to, instead, include language which would place the burden of proof on the party requesting that the point be counted.

Judge Harrell stated that Judge Avery's motion would, first, have to be defeated, then Mr. Davis could make his motion to replace the language.

Delegate Anderson asked how many times the Guidelines Subcommittee met to discuss this issue. Judge Avery noted that the Guidelines Subcommittee met on December 4 to discuss the proposed language. Delegate Anderson asked if the Subcommittee entertained any witnesses for the discussion. Judge Avery stated that the Subcommittee held a teleconference, as is common practice. Delegate Anderson stated that he agreed with Mr. Davis and, further suggested that it would be important to speak with practitioners completing the guidelines before the Commission agrees upon language to define delinquency.

Dr. Soule noted that the party responsible for maintaining the juvenile delinquency database at DJS provided information to the Commission regarding the availability of data to distinguish between facts sustained and adjudicated delinquent. DJS indicated that it would not be possible, using the DJS ASSIST system, to determine if a charge was found facts sustained but the youth not adjudicated delinquent.

Mr. Finci noted that individual jurisdictions may use systems other than ASSIST to calculate the juvenile delinquency score.

Senator Kelley suggested that, since there is variability in who completes the worksheet and the data available to calculate the juvenile delinquency score, the proposed language be amended to indicate that the instructions for calculating the juvenile delinquency score are not assumed to reflect the data currently available, but rather recommend that data be collected in a consistent manner and in such a way that it is possible to distinguish between facts sustained and adjudicated delinquent.

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Judge Harrell asked if Judge Avery (who made the current motion) and Ms. Martin (who seconded the current motion) would accept Senator Kelley's amendment as a friendly amendment. Judge Avery asked if there was any objection to the amendment from the Guidelines Subcommittee members. Hearing no objection, Judge Avery stated that it would be an acceptable amendment.

Judge Harrell asked Senator Kelley exactly how the proposed amendment would read. Senator Kelley stated that it would include mention that no consistent standard has been followed in terms of recording juvenile delinquency data and note the Commission's recommendations pertaining to record keeping going forward. Judge Avery asked if Senator Kelley was suggesting a preamble to the juvenile delinquency score. Dr. Soulé asked if the amendment would be a footnote to the juvenile delinquency score instructions. Ms. Martin clarified that Senator Kelley was suggesting a preamble to indicate that, because there has not been any consistent record keeping practice, this is what the Commission recommends going forward. Senator Kelley agreed with Ms. Martin's interpretation of her amendment. Ms. Martin expressed support for the amendment and expressed her belief that juvenile records should be kept appropriately.

Mr. Davis asked Dr. Soulé where the data was obtained regarding the 1-2% of juveniles with facts sustained who were not adjudicated delinquent. Given reports that practitioners do not have access to data to distinguish between the two steps of the process, Mr. Davis wondered how these figures were calculated. Dr. Soulé responded that DJS provided the figures from a table of decisions and dispositions for all formalized cases from fiscal year 2015 through fiscal year 2017. The 1-2% figure comes from youth who were flagged as "services not ordered." DJS indicated that this field is an approximation of the number of youth who are found facts sustained but not adjudicated delinquent, and the actual figure may be smaller.

Mr. Davis stated that he spoke to attorneys in Anne Arundel and Montgomery Counties who noted that magistrates will sometimes find youth involved and several months later adjudicate the youth as not delinquent. Therefore, Mr. Davis suggested that the number of youth with facts sustained but not adjudicated delinquent is higher than 1%. Mr. Davis clarified that magistrates in these instances may order probation or other services following the finding of involvement, but hold off on the official adjudication as delinquent pending the youth's completion of ordered services. Judge Avery noted that there is no legal mechanism for this type of diversion program. Mr. Davis noted that this occurs quite frequently. Ms. Martin noted that although the judge was not saying the words "adjudicated delinquent," because the youth was ordered to receive services, he or she was adjudicated delinquent. Mr. Davis disagreed with Ms. Martin's interpretation. Judge Lewis noted that if the judge has not pronounced a child delinquent, then it has not happened. Judge Lewis compared the process to a probation before judgement (PBJ).

Senator Kelley emphasized the variability in how the juvenile delinquency process is handled across jurisdictions and suggested that her recommended preamble would recognize this variability and encourage a movement towards consistency.

Judge Avery expressed that it was not a record keeping issue, but rather a statutory issue. Judge Avery noted that there are two separate hearings pertaining to juvenile delinquency. The adjudication hearing is where facts are found sustained.

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Mr. Davis stated that the proposed language makes an assumption that a youth with facts sustained has been adjudicated delinquent. Judge Avery disagreed with Mr. Davis's interpretation of the language and urged the Commission to be cautious in overstating the issue. Judge Avery noted that the occurrence of facts sustained but not adjudicated delinquent is rare. Mr. Davis disagreed.

Ms. Martin asked how delinquency is currently being defined in the guidelines with respect to facts sustained versus adjudicated delinquent. Ms. Martin stated that it was her understanding that the juvenile delinquency score is presently being calculated with facts sustained. Mr. Davis noted that, currently, the juvenile delinquency score includes commitment in its definition, and the only way for a youth to be committed is to be adjudicated delinquent. Ms. Martin noted that a defendant may receive a point on the juvenile delinquency score with just adjudications and no commitments. Mr. Finci noted that two points on the juvenile delinquency score requires a commitment, while one point does not. Mr. Finci further noted that a defendant with only one adjudication would receive zero points. Mr. Davis stated that is was his understanding that the current delinquency score takes into account the two-step process. Mr. Davis noted that Ms. Martin agreed with his position at the September 19, 2017, business meeting. Ms. Martin stated that she agreed that juvenile delinquency was a two-step process. Ms. Martin clarified that she was asking whether the current instructions for the juvenile delinquency score define adjudication as facts sustained or as adjudicated delinquent. Mr. Davis responded that the current instructions are unclear and that is of concern.

Judge Avery noted that less than 1% of youth are found facts sustained but not adjudicated delinquent. Judge Avery further noted that there may be other reasons for finding youth not delinquent; for instance, the judge may engage in a diversion process not contemplated by statute. Judge Avery noted that the proposed language would give the defendant the benefit of the doubt if there was any discrepancy between facts sustained and adjudicated delinquent. Mr. Davis disagreed with Judge Avery's interpretation of the proposed language and noted that the defendant would not be given the benefit of the doubt because the defendant would have to prove that he or she was not adjudicated delinquent.

Senator Cassilly questioned why the Commission is distinguishing between adjudication and delinquency and, further, why the Commission would give greater penalty for delinquency as opposed to adjudication. Senator Cassilly noted that youth are often adjudicated delinquent when the magistrate finds that the youth has no other recourse. Senator Cassilly remarked that drawing a distinction between facts sustained and delinquency would be unfair as it penalizes the youth who has no access to resources. Therefore, Senator Cassilly suggested that the definition of juvenile delinquency be restricted to facts sustained, with no reference to adjudicated delinquent.

Senator Kelley noted that if the Commission agreed with Senator Cassilly's definition, new language would have to be proposed to define juvenile delinquency. Judge Avery disagreed and noted that Senator Cassilly's suggestion is consistent with the proposed language which defines juvenile delinquency as facts sustained.

Mr. DeLeonardo noted that the juvenile delinquency study, including the analyses performed to validate Adjudications Only #2, defined delinquency as facts sustained. Mr.

DeLeonardo additionally noted that it is the finding of involvement (i.e., facts sustained) that predicts recidivism, not adjudication as delinquent. Further, Mr. DeLeonardo noted that adult criminal records can be unclear as to the nature of the offense or disposition. In these instances, both parties present their case and the judge makes the final determination as to whether an offense should be included.

Mr. Finci noted that he initially supported the proposed language during the Guidelines Subcommittee meeting because it allowed for the state or defense to exclude charges where the youth was found facts sustained but not adjudicated delinquent. However, Mr. Finci expressed concern that the proposed language excuses the practitioner preparing the worksheet from distinguishing between facts sustained and adjudicated delinquent. Mr. Finci noted that it was not the intention to excuse practitioners, specifically Parole & Probation agents completing PSIs, from investigating juvenile records to make the distinction when possible. Mr. Finci suggested that the language be amended so that the Parole & Probation agent in charge of the PSI must note whether or not they could determine that a charge was found both facts sustained and adjudicated delinquent.

Mr. DeLeonardo noted that a finding of facts sustained is going to be considered by the judge, regardless of whether the youth was adjudicated delinquent. Therefore, if the guidelines are to be reflective, they should include findings of facts sustained. Mr. DeLeonardo questioned whether the proposed language is suggesting to judges that charges not be considered at all if the juvenile was not adjudicated delinquent.

Ms. Embry asked why the juvenile records are incorrect, in that they do not distinguish between facts sustained and adjudicated delinquent. Judge Avery expressed her belief that the records are not incorrect. Dr. Soulé noted that the (DJS ASSIST) database is not incorrect. The database does accurately convey whether a charge was found facts sustained, however the data do not necessarily indicate whether the youth was adjudicated delinquent. Ms. Embry asked why that information was not available in the database. Dr. Soulé responded that he could not answer why adjudicated delinquent is not a separate field in the database.

Dr. Soulé noted that the definition of adjudicatory hearing and disposition hearing, with respect to the sentencing guidelines, is not currently contained in COMAR. Dr. Soulé noted that the proposed language clarifies the definition of juvenile delinquency. Mr. DeLeonardo suggested that the proposed language is causing more confusion than the current language and suggested maintaining the current language.

Mr. Davis noted that at the September 19 meeting, it was agreed that both steps of the juvenile delinquency process had to be met to score a point. Mr. Davis stated that the proposed language was in contrast to this agreement.

Judge Avery noted that there was no motion or vote on the two-step process at the September 19 meeting. Judge Avery further noted that only 1% of youth with findings of facts sustained are not adjudicated delinquent. Mr. Davis replied that it is unclear whether that 1% figure is accurate. Dr. Soulé noted that he could not verify where DJS obtained the data to calculate the 1% figure. Mr. Davis noted that the figure could not come from their database as they have stated that they have no field to indicate whether a youth is adjudicated delinquent. Dr. Soulé noted that DJS has a field in their database to indicate "services not ordered," and this field was used to obtain the 1% figure. Dr. Soulé clarified

that "services not ordered" is a catch-all for those cases not otherwise disposed of, for instance via commitment, services ordered, or the case dropped.

Judge Harrell reiterated that there had been a motion made and seconded to accept the proposed language recommended by the Guidelines Subcommittee. Additionally, Senator Kelley made a motion for a friendly amendment to the proposed language. Judge Harrell stated that the friendly amendment motion would be addressed first and asked for any additional discussion. Senator Cassilly commented that he would like to see specific language for the amendment. Absent specific language, Senator Cassilly noted that he would like to table the motion. Delegate Vallario commented that the proposed amendment commenting on juvenile delinquency record keeping practices may seem out of place in the context of the sentencing guidelines.

Judge Harrell asked if there was a second to Senator Kelley's motion. Hearing no second, the motion did not proceed.

Judge Avery again moved to adopt the proposed language with respect to the definition of juvenile delinquency recommended by the Guidelines Subcommittee in the memo, *Points of Clarification for Adjudications Only #2*. Ms. Martin seconded the motion. The Commission voted 9 to 5 to adopt the proposed language.

Judge Avery made a motion to accept the Guidelines Subcommittee's recommended language with respect to defining the reference point for the five-year lookback window as the "most recent instant offense." Senator Kelley seconded the motion. The Commission voted unanimously to adopt the proposed language.

c. Review of policy regarding the posting of testimony from the annual Public Comments Hearing

Judge Avery stated that it was brought to the Commission's attention that an ex-offender and his family who previously provided testimony to the MSCCSP were now being harassed by an individual who had located their testimony online. At the individual's request, staff removed from the MSCCSP's website the individual's and his family's testimony. In light of this incident, the Guidelines Subcommittee recommended that the Commission adopt a new policy pertaining to testimony received in response to the Commission's annual Public Comments Hearing. Per the new policy, no individual testimony or personal information will be published on the MSCCSP's website. Only a summary of testimony will be included in the Public Comments Hearing minutes published on the website. Additionally, the Commission will redact personal information related to private citizens that is contained in testimony currently published on the MSCCSP's website. Name, job title, and agency will remain unredacted in testimony previously provided, and published on the MSCCSP's website, by experts or individuals who provided testimony on behalf of government agencies.

Judge Avery made a motion to adopt the policy recommended by the Guidelines Subcommittee. Senator Kelley seconded the motion. The Commission voted unanimously to adopt the Guidelines Subcommittee's policy concerning the posting of testimony from the annual Public Comments Hearing.

d. Review of previously unclassified offenses and altered offenses related to the repeal of Article 83A

Judge Avery referred the Commission to the memo, *Review of Previously Unclassified Offenses and Altered Offenses Related to the Repeal of Article 83A*, and noted that the Guidelines Subcommittee, at its December 4 meeting, reviewed the classification of two offenses related to the recodification of Article 83A to Economic Development Article (EC), § 10-439.

i. Public Health and Safety, Crimes Against – Purchase, sell, transfer, or obtain any stem cell material donated in accordance with EC, § 10-438 for financial gain or advantage (EC, § 10-439).

Judge Avery noted that this offense was previously unclassified by the Commission. Judge Avery made a motion to adopt the Guidelines Subcommittee's recommendation that the offense be classified as a property offense with a seriousness category VI. Senator Kelley seconded the motion. The Commission voted unanimously to adopt the Guidelines Subcommittee's recommendation.

ii. Public Health and Safety, Crimes Against – Conducting or attempting to conduct human cloning, etc. (EC, § 10-440).

Chapter 306 of the laws of Maryland 2008 repealed Article 83A, §§ 5-2B-12 and 5-2B-13. These two offenses were modified and recodified by EC, § 10-440. Article 83A, §§ 5-2B-12 and 5-2B-13 criminalized conducting or attempting to conduct human cloning. Specifically, Article 83A, § 5-2B-12 created a misdemeanor penalty up to three years imprisonment and a fine up to $50,000 for a first offense, and Article 83A, § 5-2B-13 created a felony penalty up to ten years imprisonment and a fine up to $200,000 for a subsequent offense. EC, § 10-440 removes the distinction between first and subsequent offenses and criminalizes conducting or attempting to conduct human cloning as a felony offense with a penalty up to ten years imprisonment and a fine up to $200,000.

Judge Avery made a motion to adopt the Guidelines Subcommittee's recommendation that the offense be classified as a property offense with a seriousness category IV. Senator Kelley seconded the motion. The Commission voted unanimously to adopt the Guidelines Subcommittee's recommendation.

5. Executive Director Report – Dr. David Soulé

a. Update on MSCCSP FY 2019 budget submission

Dr. Soulé reported that he had four items to review. First, he advised that at the end of September, the staff submitted a fiscal year 2019 budget in accordance with the $500,000 target given to the Commission for the year. In the course of preparing for this budget submission and in conjunction with an assessment of budgetary needs, the staff submitted two over-the-target requests for fiscal year 2019. Dr. Soulé noted that this is the second consecutive year the MSCCSP has submitted over-the-target requests.

Dr. Soulé stated that the first over-the-target request of $63,000 is to create a dedicated funding source for contractual programming costs for the Maryland Automated

Guidelines System (MAGS). In this request, it was noted that the Department of Public Safety and Correctional Services (DPSCS) has been a tremendous partner for the MSCCSP in hosting the MAGS application and has always supported the programming efforts for the application out of their own budget, and at no cost to the MSCCSP. However, for that reason, Dr. Soulé stated that, understandably, the MSCCSP is not always a top priority at DPSCS in terms of allocating resources for programming costs. Therefore, the goal is to create a dedicated funding source to be able to support programming sources to keep MAGS operational and to be able to complete MAGS enhancements when needed.

Dr. Soulé stated that funding to create the MAGS application came primarily from a federal Bureau of Justice Assistance grant, and last year the MSCCSP was very fortunate to receive a Byrne Justice Assistance grant to support the application. However, Dr. Soulé noted that it is not realistic to expect to secure grant funding every year, which is why this over-the-target request has been submitted.

Dr. Soulé stated that the second priority over-the-target request is for additional funds to support the MSCCSP's part-time policy analyst position, currently staffed by Jen Lafferty, a University of Maryland graduate research assistant. The MSCCSP is staffed with four full-time positions and one part-time graduate research assistant who works 20 hours per week during the academic calendar year, and the hope is to make this a position that can support full-time employment over the summer months.

Dr. Soulé stated the staff is hopeful that the Governor will be able to support these requests and stated that he would appreciate any support that can be provided by the Commissioners.

Senator Kelley commented that she would imagine the summer months to be a particularly busy time, as any changes made during the annual legislative session must be addressed before they go into effect (generally in October of the same year).

b. Update on recent/upcoming feedback meetings and trainings

Dr. Soulé stated that he recently met with the judges in Allegany, Calvert, Garrett, and Washington counties, and noted that it is his goal to meet with the judges in each jurisdiction every two to three years to provide feedback on data and information relative to their individual jurisdiction.

Dr. Soulé also noted that Katharine Pembroke, the training coordinator for the MSCCSP, provided a MAGS orientation session for practitioners from Dorchester and Somerset counties on December 7, as they will be utilizing MAGS effective January 1, 2018.

Additionally, Dr. Soulé noted that Ms. Pembroke recently provided a guidelines training for the Baltimore City State's Attorney's Office, and is scheduled to meet with the post-conviction unit at the Maryland Office of the Public Defender on December 13, 2017.

c. Update on MAGS enhancements

Dr. Soulé noted again that the MSCCSP was fortunate to obtain a grant this past year to support MAGS enhancements, and that the latest version of MAGS (MAGS 6.0) will be deployed in early 2018. Dr. Soulé stated that the staff has been working on testing the new version, as well as updating various training materials. He noted that MAGS 6.0 will

bring some new features that have been called for by some of the practitioners who use the application.

Dr. Johnson noted that one of the Commission's recommendations in its study of alternatives to incarceration is the collection of new information on alternatives to incarceration. Dr. Johnson asked if this feature will be included in the newest version of MAGS. Dr. Soulé replied that this feature will not be a part of MAGS 6.0, because at the time of its development, this recommendation had not yet been made. However, Dr. Soulé stated that this addition will hopefully be a part of MAGS 7.0, pending receipt of the necessary funding.

d. Update on MSCCSP annual report

Dr. Soulé advised that the MSCCSP 2017 Annual Report is due on January 31, 2018, and noted that the staff has begun preparations for the report. A draft will be sent to Commissioners for review by January 19, 2018.

6. Proposed MSCCSP meeting dates for 2018

Judge Harrell referred the Commission to the proposed meeting dates for 2018:

May 8, 2018
July 10, 2018
September 18, 2018
December 11, 2018.

No objection was made with regards to the proposed meeting dates for 2018.

7. Old business

None.

8. New business and announcements.

None.

The meeting adjourned at 8:19 pm.

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