



## Minutes

Maryland State Commission on Criminal Sentencing Policy  
Judiciary Education and Conference Center  
Annapolis, MD 21401  
May 8, 2018

### Commission Members in Attendance:

Honorable Glenn T. Harrell, Jr., Chair  
Honorable Shannon E. Avery, Vice-Chair  
Senator Robert G. Cassilly  
William M. Davis, Esquire, *representing Public Defender Paul B. DeWolfe*  
Honorable Brian L. DeLeonardo  
Barbara Dorsey Domer  
Richard A. Finci, Esquire  
Brian D. Johnson, Ph.D.  
William E. Koutroumpis  
Honorable Patrice E. Lewis  
Kathleen C. Murphy, Esquire, *representing Attorney General Brian E. Frosh*  
Honorable James P. Salmon  
Rachel Sessa, *representing Secretary Stephen T. Moyer*  
Delegate Joseph F. Vallario

### Staff Members in Attendance:

Sarah Bowles  
Stacy Najaka, Ph.D.  
Katharine Pembroke  
David Soulé, Ph.D.  
Brianna Tocci, MSCCSP Intern

### Visitors:

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 5:32 pm when attendance reached a quorum.

#### 3. Introduction of new Commissioners: Kathleen C. Murphy, Office of the Attorney General representative, and William E. Koutroumpis, public representative

Judge Harrell began by introducing two new Commission members, Kathleen (KC) Murphy, who will representing the Office of the Attorney General, and William Koutroumpis, who was appointed to the Commission as a public representative.



#### 4. **Approval of minutes from the December 11, 2017 MSCCSP business meeting**

The Commission approved the minutes as submitted.

#### 5. **Approval of minutes from the December 11, 2017 public comments hearing**

The Commission approved the minutes as submitted.

#### 6. **Guidelines Subcommittee Report – Judge Shannon Avery**

a. Review of offender score instructions for scoring multiple prior convictions from a single criminal event (Action item)

Judge Avery indicated that Dr. Soulé would present the report of the Guidelines Subcommittee. Dr. Soulé referred the Commission to the corresponding memorandum entitled “Instructions for Scoring Multiple Prior Convictions from Single Criminal Event.”

Dr. Soulé noted that this issue was brought to the attention of the MSCCSP staff when a criminal defense attorney expressed concerns about potentially confusing wording in the prior adult criminal record instructions for multiple prior convictions relating to a single criminal event. Dr. Soulé further indicated that the MSCCSP staff reviewed the language and presented clarifying language to the Guidelines Subcommittee. Dr. Soulé clarified that the intent of the proposed revisions in the memo was not to change the existing rule, but rather to clarify the rule’s instructions.

Dr. Soulé further noted that the Maryland Sentencing Guidelines Manual (MSGM) instructs that, with listed exceptions, all adjudications should be included in the calculation of the prior adult criminal record score. Several paragraphs later, however, the instructions note that the calculation should not include all adjudications when multiple convictions stem from a single criminal event. Dr. Soulé stated that the Guidelines Subcommittee agreed that the additional instruction being listed at the end of more than four pages of instructions is problematic.

Dr. Soulé noted that the staff identified two other related areas where the MSGM could be revised to provide greater clarity for the Offender Score Instructions. Dr. Soulé first referred to Sample Case 6 from Chapter 16. This Sample Case provides an example of two prior adult convictions with the same offense date. The sample case does not currently indicate whether these crimes relate to a single criminal event. Dr. Soulé noted that the proposed revisions offer clarifying information, in that the proposed revisions indicate that the two offenses arise from the same criminal event and, as such, only one of these two prior offenses should be scored as part of the adult record.

Dr. Soulé noted that secondly, the individual who originally brought this issue to the staff’s attention also questioned whether the same instructing language regarding the treatment of multiple offenses should also be applied for the juvenile score. Dr. Soulé further noted that the Guidelines Subcommittee agreed with the staff recommendations and supported the amended language for the MSGM illustrated at the top of page 4 of the



memo entitled “Instructions for Scoring Multiple Prior Convictions from Single Criminal Event” and the corresponding language that will be mirrored in COMAR. Dr. Soulé indicated that after the Guidelines Subcommittee met, the staff confirmed with Dr. Jinney Smith from the Maryland Data Analysis Center, that the new juvenile score to be adopted on July 1, 2018, was created using this same scoring logic. That is, one adjudication was scored per adjudication hearing regardless of the number of offenses with sustained facts at that particular hearing. Dr. Soulé indicated that adopting the clarifying instructions is consistent with the new juvenile score language.

Dr. Soulé presented the proposed revisions from the referenced memorandum as a recommendation of the Guidelines Subcommittee. Judge Harrell questioned whether the attorney who questioned this language had an actual problem or whether this was an abstract problem. Dr. Soulé replied that he believed the attorney presented a question that originated from an actual case.

Judge Harrell questioned what would happen if the revisions were not made. Dr. Soulé stated that if the rules were not clear, there may be inconsistent scoring. Delegate Vallario questioned how parole and probation is treating similar situations. Dr. Soulé indicated that the guidelines worksheet only provides the summary score of the total prior record and therefore the staff does not know how each individual prior adjudication is scored relative to the final summary score.

Judge Avery noted that the Guidelines Subcommittee felt the instructions were already present in the MSGM, but they were not as clear as they could be. Judge Avery further noted that the Guidelines Subcommittee did not address what constitutes a single criminal event and that this may be a point of confusion for some practitioners and that any disputes about a single criminal event need to be resolved by a trial court.

Dr. Soulé noted that after the Guidelines Subcommittee meeting, the staff did contemplate whether the juvenile scoring instructions could be simplified even further. Dr. Soulé presented staff proposed alternative language that was developed after the Guidelines Subcommittee meeting. Dr. Soulé read the following proposal, “[O]nly one finding of a delinquent act should be counted for a single adjudicatory hearing. If multiple findings of a delinquent act relate to a single adjudicatory hearing, the individual completing the worksheet shall count only one finding of a delinquent act.”

Judge Avery stated that, procedurally, the language should go back to the Guidelines Subcommittee before being presented to the Commission. Judge Avery further noted that not all of the Guidelines Subcommittee members were present and while she did not view this as a large substantive change, she could not speak for the other members of the Guidelines Subcommittee.

Mr. Davis indicated that the language that was originally proposed, referencing a single criminal event, would be more consistent with the language pertaining to the scoring of the prior adult criminal record. Senator Cassilly questioned whether the proposed



language should be consistent with the multiple victim stacking rule and should say “the prior adult criminal record shall not include more than one adjudication arising from a single criminal event, unless there are multiple victims.” Judge Avery disagreed, in that the multiple victim stacking rule is its own rule and that the Commission should not start down the path of defining a single criminal event. Senator Cassilly questioned whether the rules were inconsistent. Dr. Soulé noted that one rule is for the present sentencing event and the other rule is for calculating the prior record. Dr. Soulé expressed further concern as to whether the practitioners who score the guidelines would have enough information to identify whether a single criminal event, as it relates to the scoring of the prior criminal record, involves multiple victims.

Mr. DeLeonardo questioned whether a situation could be interpreted as a single criminal event with separate convictions. Judge Avery used a violation of a protective order case as a clarifying example. Judge Avery indicated that the defendant kidnapped his own children and there were multiple violations of a protective order. Judge Avery continued to note that each time the defendant called to harass his wife was treated as a separate criminal event for purposes of sentences, which aggregated the defendant’s sentence to a longer period of incarceration. Judge Avery noted that this is an example of a case where the parameters of a single criminal event were discussed. Judge Avery indicated that these rules tell individuals to use the flagship offense and if the prosecutor believes that this is not adequate to represent the defendant’s actions in a specific case, then the prosecutor can make that argument. If the defendant believes that the prosecutor is over counting, the defense attorney can make that argument.

Judge Harrell asked for a motion and Mr. DeLeonardo questioned whether the Commission was using the original language or sending the language back to the Guidelines Subcommittee.

Mr. DeLeonardo then asked Judge Avery whether she believed the alternative language was noticeably different than the language originally proposed. Judge Avery stated that she believed the Commission should preserve the procedural integrity of the Guidelines Subcommittee and asked the Commission not to vote on either the proposed language or the alternative language until the next meeting. Judge Avery asked that the Guidelines Subcommittee address the matter at their next meeting and indicated that they will present their recommendations at the next full Commission meeting.

Mr. DeLeonardo made a motion to ask the Guidelines Subcommittee to review the alternative language and come back to the full Commission with recommendations at the July meeting. The motion passed.

**The Commission unanimously voted to ask the Guidelines Subcommittee to come back to the full Commission with recommendations at the July meeting.**

b. Application of the Multiple Victim Stacking Rule (Action item)

Dr. Soulé referred the Commission to the memorandum entitled, “Application of the Multiple Victim Stacking Rule.” Dr. Soulé noted that the multiple victim stacking rule



was added to the Guidelines Manual in 2003 and that it provides for an enhanced sentencing guidelines range in scenarios where multiple victims are involved, and the offenses are not seriousness category I or II offenses. Dr. Soulé stated that the rule instructs that the highest of the upper limits of the guidelines range for each victim should be added or “stacked” when there is a single criminal event with not more than one seriousness category I or II offense.

Dr. Soulé noted that the multiple victim stacking rule has often been interpreted by practitioners and staff as applicable in sentencing events that contain only a single criminal event, and not applicable in sentencing events where multiple criminal events are sentenced at the same time, in front of the same judge. Dr. Soulé stated that with this interpretation, the particularly serious nature of a multiple-victim criminal event cannot be accounted for when multiple criminal events are sentenced together.

Dr. Soulé indicated that in February 2018, an Assistant State’s Attorney (ASA) contacted the MSCCSP regarding the multiple victim stacking rule and provided an example of the unintended consequence of not applying the rule to sentencing events that contain multiple criminal events. Dr. Soulé noted that, for the case referenced, in the first criminal event, the defendant was charged with two counts of first degree assault and one count of home invasion. Pending trial for the first criminal event, the defendant engaged in witness tampering/intimidation. The defendant entered a guilty plea to the three charges from the first criminal event and one count of witness intimidation from the second criminal event. The defendant was set to be sentenced for both criminal events at the same time, in front of the same judge. Dr. Soulé noted that this would constitute one sentencing event.

Dr. Soulé referred to Table 1 on page 2 of the memorandum entitled, “Application of the Multiple Victim Stacking Rule,” to illustrate how the guidelines would be scored with and without the multiple victim stacking rule. Dr. Soulé noted that applying the multiple victim stacking rule to the guidelines range for the first criminal event results in an overall range of 10 to 50 years for criminal event one, compared with 10 to 18 years without the multiple victim stacking rule. The guidelines range for the second criminal event (witness intimidation) is 4 to 10 years. Dr. Soulé noted that adding the ranges for event one and event two results in an overall guidelines range for this sentencing event of 14 to 60 years with the multiple victim stacking rule and 14 to 28 years without the multiple victim stacking rule.

Dr. Soulé stated that the staff researched this issue and found no evidence that the Commission ever intended for the multiple victim stacking rule to benefit defendants who are sentenced for multiple, rather than single, criminal events at the same time, in front of the same judge. Dr. Soulé indicated that during the Guidelines Subcommittee teleconference, the Guidelines Subcommittee members reviewed the current language regarding the multiple victim stacking rule and agreed that the language does not preclude the rule from being applied in multiple criminal events. The Guidelines Subcommittee, however, also agreed that the instructions for the multiple victim stacking rule should be revised to provide greater clarity to practitioners.



Dr. Soulé noted that the Guidelines Subcommittee recommended revisions to the MSGM and corresponding language in COMAR as specified in the memorandum entitled, “Application of the Multiple Victim Stacking Rule.”

Dr. Soulé further noted that while the Guidelines Subcommittee endorsed these clarifying amended instructions, a member of the Guidelines Subcommittee inquired whether the Commission should complete a data review on the multiple victim stacking rule to examine how often the rule is applied at sentencing and to examine its impact on sentencing. Dr. Soulé indicated that the Guidelines Subcommittee supported a review of how the multiple victim stacking rule is being applied, assuming there are sufficient resources for the staff to complete such a review. If the full Commission supports this review, the Guidelines Subcommittee recommends that the Commission should direct the staff to review data on the application of the multiple victim stacking rule.

Judge Avery noted that Mr. Finci suggested the review of the multiple victim stacking rule and the Guidelines Subcommittee agreed, as long as the review would not unduly burden the staff. Mr. DeLeonardo questioned whether there was any indication that the multiple victim stacking rule was being misapplied. Dr. Soulé indicated that there was not. Judge Lewis noted that there is no way of knowing whether the rule is being misapplied.

Judge Avery noted that the adversarial system is a check on the misapplication of any sentencing rules. Dr. Soulé noted that the data do not allow staff to determine whether the rule is being misapplied but rather, how often the rule is applied and its impact on sentencing. Dr. Soulé noted that this would not be a research study, but rather a descriptive study. Dr. Soulé also noted that the programming rules in the Maryland Automated Guidelines System (MAGS) do not allow someone to select the multiple victim stacking rule unless the case meets certain criteria.

Senator Cassilly questioned the purpose of the study. Dr. Soulé replied that he could not speak for Mr. Finci, but that he believed the purpose was to understand how often the multiple victim stacking rule is applied and what impact it has on the guidelines and the sentence [note that Mr. Finci was delayed and was not present at this point in the meeting to provide his input]. Judge Avery noted that the idea of the study was raised and the members of the Guidelines Subcommittee do not oppose this study, as long as it does not present an undue burden to staff.

Senator Cassilly made a motion to approve the recommendations presented by the Guidelines Subcommittee.

Mr. Davis asked if the study imposes an undue burden on staff. Dr. Soulé responded that it does not. Mr. Davis indicated that he didn’t understand the antagonism to do the study. Judge Avery noted that the Commission was not voting on the study, but rather the proposed language to the multiple victim stacking rule. Judge Avery further noted any potential study would be spearheaded by Mr. Finci.



Mr. DeLeonardo seconded the motion to approve the recommendations presented by the Guidelines Subcommittee.

**The Commission voted 12 to 1 to revise the instructions for the multiple victim stacking rule.**

Mr. Davis made a motion to conduct the study, noting that he believed there were two things on the table: the proposed language and directing the staff to conduct a study on the application of the multiple victim stacking rule. Judge Avery noted that the study required further discussion with the member who proposed this study and at the time, the Commission does not know the research question. Judge Avery further noted that she is not opposed to any research done by the staff and that any inquiry is useful to the Commission in carrying out its function, but that the Commission needs more information from Mr. Finci.

Mr. Davis stated that he was under the impression that the Guidelines Subcommittee was recommending that the staff move forward with the study. Dr. Soulé confirmed that it was also his understanding that the recommendation was to make the amendments as proposed, and to recommend that the full Commission, if they agree, direct staff to study the issue further.

Judge Harrell requested that the study still be discussed between Mr. Finci and the staff. Judge Harrell further clarified that the motion is to endorse the revised language and to further recommend that the Commission direct the staff to review data on the application of the multiple victim stacking rule.

Mr. DeLeonardo noted that he was looking for a rationale for the study, and asked that the study be discussed in more detail in July. He asked that the Commission stick with the original motion. Senator Cassilly noted that the original motion to adopt the revisions to the multiple victim stacking rule was already approved, but that the motion did not include the study. Judge Harrell asked that it be noted that the study will be brought up in July and in the meantime, Mr. Finci and the staff will discuss the boundaries of the study.

Note: This item was further addressed under New Business, when Mr. Finci was present.

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

### **a. Completion of training for Open Meetings Act**

Dr. Soulé reported that he had seven items to review. Dr. Soulé noted that his first item to report was not included on the agenda. Dr. Soulé reminded the Commission that, effective July 1, 2017, each agency must designate one member to complete the Open Meetings Act training should the need ever arise to hold a closed session. Previously, Elizabeth Embry (former representative from the Office of the Attorney General (OAG)) had completed the training as the designated member for the MSCCSP. However, given that Ms. Embry left the OAG's office to seek public office, another member was required to complete the training. Dr. Soulé thanked the Commission's new representative from the OAG, Kathleen C. Murphy, for agreeing to complete the training and serve as the



MSCCSP designee. Ms. Murphy completed the Open Meetings Act training in April in advance of her first meeting as a member of the Commission.

b. Introduction of undergraduate student intern

Dr. Soulé introduced the MSCCSP's undergraduate intern from the University of Maryland, Brianna Tocci. Dr. Soulé noted that Brianna worked with the Commission staff for the Spring 2018 semester and that today would be her last day with the MSCCSP, as the academic semester ends in the upcoming week. Dr. Soulé thanked Brianna for her contributions. Dr. Soulé further noted that the Commission is fortunate to have bright students like Brianna and that both the Commission and the students benefit greatly from the internship program. Dr. Soulé additionally thanked Judge Avery for arriving early to meet with Brianna to provide a Commissioner's insight into the work the MSCCSP completes.

c. Update on the Maryland Automated Guidelines System

Dr. Soulé reported that, on February 1st, a new version of MAGS (MAGS 6.0) was released. The new release contains several updates including, but not limited to the following:

- Per the MSCCSP existing rule and in support of recommendations made by the Commission in the Study on Alternatives to Incarceration, sentences are flagged as guidelines-compliant if they include a sentence to a corrections options program and if the defendant's initial sentence plus any suspended sentence falls within or above the overall guidelines range.
- For those jurisdictions utilizing the Maryland Electronic Courts system (MDEC), the Case # field is pre-populated with the MDEC prefix corresponding to the user's jurisdiction to make it easier to enter case numbers consistent with the new MDEC case number format (i.e., CJJCRY######).

Additionally, Dr. Soulé reported that since the Commission's last meeting in December 2017, MAGS was deployed in Dorchester and Somerset counties on January 1, 2018, and in Wicomico County on April 1, 2018. MAGS will next be deployed in Worcester County on July 1, 2018.

d. Update on review of new and revised penalties from 2018 Legislative Session

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 2018 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, 2018.

e. Update on MSCCSP FY 2019 budget

Dr. Soulé noted that, as discussed at the Commission's December 2017 meeting, the MSCCSP submitted two over-the-target requests for the FY 2019 budget, totaling approximately \$73,000. Dr. Soulé stated that the first priority over-the-target request





equaled \$63,000 to create a dedicated source of funding for contractual services to provide information technology support for updating and maintaining MAGS. The second priority over-the-target request equaled approximately \$10,000 to increase the summer hours for the MSCCSP's part-time policy analyst position (staffed by a graduate research assistant) to allow this individual to work 40 hours per week during the 10-week summer period. Dr. Soulé reported that neither of the over-the-target requests were included in the Governor's FY 2019 allowance for the MSCCSP. Due to the fiscal conditions of the State, over-the-target requests were granted in very rare circumstances. Dr. Soulé noted that staff has reached out to the Governor's Office of Crime Control and Prevention (GOCCP) to inquire about the possibility of grant funds to address the MSCCSP's funding needs. Dr. Soulé noted that the MSCCSP received a grant to support MAGS programming needs in FY 2018. The MSCCSP is currently waiting on a response to see if grant funding will be an option for FY 2019.

Judge Avery asked Dr. Soulé whether the MSCCSP had ever sought a Bureau of Justice Assistance Grant (BJAG) or whether that request would have to go through the GOCCP. Dr. Soulé replied that those requests generally go through the GOCCP and noted that the MSCCSP received a BJAG grant for FY 2018 to cover the costs of enhancements and updates to MAGS. Dr. Soulé also noted, however, that BJAG grants are designed to be one-time grants and are not designed to provide a continual source of funding. Dr. Soulé noted that a discussion would be necessary to identify a dedicated source of funding for MAGS, as MAGS provides numerous benefits to users and the Commission as well as other State agencies. Dr. Soulé noted that the Department of Public Safety and Correctional Services has provided tremendous support for MAGS for many years and continues to do so, however they cannot always cover MAGS programming costs due to other agency priorities.

f. Update on recent/upcoming feedback meetings and trainings

Dr. Soulé reported that, since the last MSCCSP meeting in December 2017, he met with the judges in the Harford County to provide feedback on the sentencing guidelines in their jurisdiction. Dr. Soulé stated that he is scheduled to meet with the judges in Prince George's County in the next week. 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 he served as an instructor at the New Trial Judges Orientation Update session on May 2, 2018. Dr. Soulé noted that his presentation provided the opportunity to talk about the work of the MSCCSP and to educate judges on corrections options, which was one of the recommendations stemming from the Commission's Study on Alternatives to Incarceration.

Judge Avery thanked Dr. Soulé for his service at the New Trial Judges Orientation and noted that Dr. Soulé was invited back to the annual Judicial Conference on May 24, 2018, to address the Justice Reinvestment Act (JRA) and, specifically, to report on the Commission's Study on Alternatives to Incarceration. Judge Avery noted that Dr. Soulé's program at the Judicial Conference in 2017 received positive feedback. Judges remarked that it was one of the most helpful programs they had ever been to at a judicial conference.



Dr. Soulé reported that the MSCCSP's training coordinator, Katharine Pembroke, provided a MAGS orientation session on the Eastern Shore in March for practitioners from Wicomico County as they began utilizing MAGS effective April 1, 2018. Additionally, Ms. Pembroke provided a sentencing guidelines training for the Baltimore City State's Attorney's Office (SAO) on April 27, 2018.

Finally, Dr. Soulé noted that he and Judge Harrell had met with Judge Daniel Long, chair of the Justice Reinvestment Oversight Board (JROB), and several staff at the GOCCP to discuss the Commission's Study on Alternatives to Incarceration. Dr. Soulé and Judge Harrell were additionally invited to speak to the JROB to provide a brief update on the Commission's Study on Alternatives to Incarceration.

g. Release of updated version of the Maryland Sentencing Guidelines Manual

Dr. Soulé noted that the MSCCSP released version 9.2 of the Maryland Sentencing Guidelines Manual (MSGM). The new manual includes the policy statement adopted by the MSCCSP that encourages judges to consider at sentencing evidence-based or innovate alternatives to incarceration when appropriate. This version of the MSGM also includes an updated Guidelines Offense Table to reflect the addition of CJIS codes for offenses amended by the JRA and for new offenses passed during the 2017 Legislative Session.

## 8. Date, time, and location for remaining 2018 meetings

Judge Harrell reminded Commissioners of the dates for the remaining 2018 meetings. Judge Lewis noted that the September 18, 2018 meeting, as listed on the agenda, was scheduled on a religious holiday and questioned whether that would present an issue for anyone. Dr. Najaka clarified that the staff had realized the error and that the meeting had been rescheduled to September 17, 2018, despite the incorrect date appearing on the agenda.

The remaining 2018 meetings will be held as follows:

July 10, 2018

September 17, 2018

December 11, 2018

## 9. Old business

None.

## 10. New business and announcements

Judge Lewis suggested that, as Mr. Finci arrived, the proposed study for the multiple victim stacking rule be discussed. Judge Harrell asked Mr. Finci for clarification as to this matter.

Mr. Finci stated that when a case has the stacking rule applied, there is a very large guidelines range (with the low end staying the same, but the high end becoming very high). Mr. Finci indicated that a review should be conducted to determine whether the multiple victim stacking rule is creating useable guideline ranges, as large ranges are often less useful. Mr. Finci suggested that staff look at the data to determine how often the rule is applied and the range of the sentences being used. Mr. Finci questioned whether the large



sentence ranges are useful and stated that he wanted to determine how judges are using the larger sentencing ranges.

Judge Harrell questioned whether this would be burdensome on the staff. Dr. Soulé indicated that this was not overly burdensome to the staff, but that the staff would have to determine how to best conduct such an analysis. Dr. Soulé indicated that this would likely start as a descriptive analysis concerning how often the rule is applied. Dr. Soulé indicated that the staff would present a plan for the descriptive analysis at the July meeting.

The meeting adjourned at 6:33 pm.