



## Minutes

Maryland State Commission on Criminal Sentencing Policy  
Judiciary Education and Conference Center  
Annapolis, MD 21401  
May 9, 2017

### Commission Members in Attendance:

Honorable Glenn T. Harrell, Jr., Chair  
Honorable Shannon E. Avery, Vice-Chair  
Senator Robert G. Cassilly  
LaMonte E. Cooke  
Honorable Brian L. DeLeonardo  
Paul B. DeWolfe, Esquire  
Barbara Dorsey Domer  
Paul F. Enzinna, Esquire  
Richard A. Finci, Esquire  
Brian D. Johnson, Ph.D.  
Honorable Patrice E. Lewis  
Honorable James P. Salmon  
Delegate Joseph F. Vallario, Jr.  
J. Michael Zeigler, *representing Secretary Stephen T. Moyer*

### Staff Members in Attendance:

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

### Visitors:

Brian Kemmet, Office of Mayor Catherine Pugh, Baltimore City; Emily Glazener, Maryland Data Analysis Center; Mateus Rennó Santos, Maryland Data Analysis Center; Jinney Smith, Maryland Data Analysis Center; Claire Rossmark, Department of Legislative Services

### 1. Call to order

Judge Harrell called the meeting to order.

### 2. Roll call and declaration of quorum

The meeting began at 5:30 p.m. when attendance reached a quorum. Judge Harrell acknowledged Commissioner Paul F. Enzinna and noted that this will be his last meeting with the Commission, as his term is ending June 30, 2017. He thanked Mr. Enzinna for his service to the people of Maryland as well as to the Commission. Judge Harrell then recognized Judge Patrice E. Lewis as the recipient of the Maryland State Bar Association, Litigation Section, 2017, Judicial Excellence Award.



### **3. Approval of minutes from the December 13, 2016 MSCCSP meeting**

Dr. Soulé noted that on page 5, the minutes should reflect that the Maryland Data Analysis Center’s juvenile delinquency score study is focusing only on adults aged 18-22 who are sentenced in an adult court, not 18-23 year olds as initially reflected in the draft minutes. The minutes were approved as amended.

### **4. Approval of minutes from the December 13, 2016 MSCCSP public comments hearing**

The Commission approved the minutes as submitted.

### **5. Juvenile Score Project, Phase 3 Update – Dr. Jinney Smith, Associate Director, Maryland Data Analysis Center (Status Report)**

Dr. Jinney Smith, Associate Director, Maryland Data Analysis Center (MDAC), along with graduate assistants Mateus Rennó Santos and Emily Glazener, presented the third of a three-part series of presentations on the impact of the juvenile delinquency score on the sentencing guidelines. Dr. Smith recapped her presentations from the May 10 and December 13, 2016, Commission meetings. Dr. Smith noted that in May 2016, her team presented the results of their analysis of the MSCCSP’s data. Given the Commission’s underlying concern about disparate juvenile commitment, their presentation in May 2016 focused on patterns and disparities with regard to the juvenile score performance. In December 2016, Dr. Smith and her team linked the MSCCSP’s data with data from the Department of Juvenile Services (DJS) as well as data containing adult criminal records. At the December 2016, Commission meeting, Dr. Smith and her team presented the results of analyses of the two sets of linked data, specifically examining the juvenile record score, how the score was calculated, and the results of a survey regarding the juvenile score calculation distributed to state’s attorneys and Parole and Probation agents across the state.

Dr. Smith stated that her team had now linked all three datasets (the MSCCSP, DJS, and adult criminal record datasets). Her presentation focused on the performance of the juvenile record score as measured by the actual worksheet scores as well as several alternative scoring systems.

Dr. Smith reviewed the current instructions for scoring the juvenile record. Dr. Smith noted that the current guidelines instructions do not instruct users as to how far back to examine a defendant’s juvenile history when calculating the juvenile score. The way the current guidelines instructions are phrased, there are two potential ways that practitioners may calculate the juvenile record score, both of which result from differing interpretations of the “five-year” rule. The first method (referred to as the replicated worksheet method), calculates the juvenile score by first looking to see if the defendant has had any adjudications in the past five years. If the defendant has at least one adjudication in the past five years, the defendant’s *entire* juvenile history is used to calculate his or her juvenile score. The second method (referred to as the “five-year decay” method) also calculates the juvenile score by first looking to see if the defendant has any adjudications in the past five years. If the defendant has at least one adjudication in the past five years, the defendant’s juvenile history *from the past five years* (not the entire juvenile history) is used to calculate his or her juvenile score. Dr. Smith stated that the data indicate that the majority of practitioners are employing the five-year decay method when calculating the juvenile score (i.e., they are looking for juvenile



adjudications/commitments in only the five years prior to the date of sentencing, not the defendant's entire juvenile history). Since the majority of users employ this method, the MDAC utilized the five-year decay method in the present analyses when looking at alternative models to score juvenile delinquency.

Judge Harrell inquired as to whether Dr. Smith was suggesting there was a disconnect or inconsistency in scoring practices among practitioners. Dr. Smith stated that the data show that most people employ the five-year decay factor. Judge Harrell suggested that this may be a rule users have arrived at on their own based on a lack of clarity in the instructions. Dr. Smith noted that it could also be that the original instructions repeat the term "five-year" multiple times, leading people to settle on the five-year decay rule for calculating the juvenile record score. Judge Harrell noted that the instructions for the juvenile record score likely need to be clarified.

Dr. Smith reviewed the limits to redesigning the juvenile score in terms of access to data. The results from the survey of state's attorneys and Parole and Probation agents (conducted by the MSCCSP in 2016) indicated that few practitioners had access to detailed data regarding juvenile commitments (e.g., length of commitment, type of facility, seriousness category of offense). Therefore, any measure of juvenile delinquency would have to be limited to counts of adjudications or commitments and not specify qualifiers, such as commitments to secure facilities or those of at least 30 days.

Dr. Smith presented a table displaying the number of juvenile complaints, formal cases, delinquent adjudications, and post-disposition placements the DJS had processed from 2000 through 2016. Dr. Smith noted that the DJS experienced a dramatic decrease across all measures starting in about 2008 to 2009. Dr. Smith noted that this decrease could be attributed to two factors: (1) an overall decrease in crime; and (2) risk and needs tools the DJS implemented during this time to classify their juvenile population better and divert offenders away from commitment. Dr. Smith noted that the present study analyzed MSCCSP data from 2008 through 2012. The 18- to 22-year old adults included in the present study would have been exposed to the juvenile system in Maryland from approximately 2003 through 2007, prior to the dramatic decrease in DJS adjudications and commitments. These adults experienced a much different juvenile system than that experienced by defendants sentenced today.

Dr. Smith noted that there were several internal and external design constraints imposed when examining the current juvenile score and developing alternative models. Internal constraints included: (1) use of the existing scoring framework of "0", "1", or "2"; (2) the score should not increase in complexity; and (3) the score should perform as well or better than the status quo on benchmarks of interest (recidivism, distribution, and disparity). External constraints included: (1) patterns and trends in DJS adjudications and commitments (i.e., a commitment today is half as rare as during the time period covered by the data, therefore there is a different meaning to commitments today), (2) limitations of data systems, and (3) variation in data access among scorers. P&P agents tend to use DJS data, while state's attorneys tend to use internal data systems. Further, Baltimore City uses an entirely different data system called Quest.



Senator Cassilly inquired as to why we should be constrained to the existing scoring framework of “0”, “1”, or “2”. Dr. Soulé noted that this constraint came from feedback from previous meetings, and was intended to maintain the simplicity of the current juvenile score and its proportionality to the remaining components of the offender score. Senator Cassilly noted that if the purpose of the project is to correlate the juvenile delinquency score with the rest of offender score, the existing framework may be satisfactory. However, if the purpose of the score is to obtain other data, such as the previously mentioned recidivism, distribution, and disparity data, the “0”, “1”, or “2” framework may not be meaningful. Dr. Soulé noted that Dr. Smith and her team would later address how they developed an alternative juvenile scoring system using the existing “0”, “1”, or “2” framework, specifically by computing a count of juvenile adjudications.

Concerning limitations of data systems, Dr. Smith explained that the current juvenile scoring system employs a hybrid method, in that both adjudications and commitments are taken into account when calculating the defendant’s juvenile record. The hybrid method is necessary because within the DJS system, you cannot link one specific adjudication to one commitment. Therefore, to avoid double penalizing someone by counting towards their juvenile score both an adjudication and its resulting commitment, the number of adjudications counted must always be greater than the number of commitments. A juvenile delinquency score of zero points currently includes crime-free defendants as well as defendants with one prior juvenile adjudication. A juvenile delinquency score of one point includes defendants with two or more prior juvenile adjudications or one prior juvenile commitment. A juvenile delinquency score of two points is a pure commitment score in that it includes defendants with only two or more prior juvenile commitments.

Dr. Smith noted the difficulty in replicating the actual worksheet scores using DJS data. Her team found that error rates (i.e., actual worksheet scores were higher or lower than the scores indicated by DJS data) were more balanced when employing the five-year decay method than the replicated worksheet method, which indicated that the majority of practitioners are utilizing the five-year decay method when calculating the juvenile score.

Mr. DeLeonardo asked what the statistical significance of the error rates was, specifically whether the present error rates were good. Dr. Smith stated that there was not any statistical significance to the error rates and that they were not terrible. Dr. Smith noted that the errors went both ways in that the scores calculated using the DJS data were sometimes higher and sometimes lower than those that appeared on the actual worksheet, and that 80% of the scores matched.

Dr. Smith then reviewed the definitions and distributions of the various juvenile scores that they analyzed, including the actual worksheet scores, the scores calculated using the five-year decay method, the replicated worksheet scores (i.e., calculated with no five-year decay), and four alternative methods to calculate the juvenile score. Dr. Smith noted that given data limitations and current DJS commitment practices, they could not develop an alternative measure using a hybrid method. They tested one commitment-only alternative score and three adjudication-only alternative scores. Dr. Smith noted that the adjudication-only scores



address the Commission's initial concern with disparate commitment practices across jurisdictions by removing juvenile commitments from the calculation.

Dr. Smith noted that, based on feedback from Commissioners at prior meetings, a variety of recidivism measures were used to test the different juvenile scores, including rearrest on any charge, rearrest on a person charge, reconviction on any charge, reconviction on a person charge, and re-incarceration in a DOC facility. Dr. Smith stated that she based the measures of recidivism for person charges on a code developed by Dr. Smith's colleague classifying 18,000 offense names into offense types. Dr. Smith noted that their analyses also incorporated Division of Correction (DOC) average time-served estimates calculated by MSCCSP staff.

In response to questions from the December 2016 Commission meeting, Dr. Smith presented recidivism data for Baltimore City versus the rest of state and males versus females. Dr. Smith noted that Baltimore City has a much higher recidivism rate than the rest of the state when recidivism is measured as rearrest on any charge, rearrest on a person charge, reconviction on any charge, or reconviction on a person charge. However, when measured as re-incarceration in a DOC facility, the recidivism rate for Baltimore City is more comparable to the rest of Maryland. In terms of gender, the recidivism rate is dramatically lower for females than males. However, Dr. Smith cautioned that there were few females in their data, in particular there were very few females with juvenile scores of one or two points.

Dr. Smith presented the results of recidivism analyses for the actual worksheet score, by type of recidivism and race. Dr. Smith noted that white defendants who scored two points on the juvenile score had higher recidivism rates than African American defendants who scored two points on the juvenile score—an issue Dr. Smith referred to as a “false positive problem.”

Dr. Johnson asked Dr. Smith whether there were differences by race when they examined error rates in the juvenile scores. In other words, were African American juveniles more likely to be over scored rather than under scored? Dr. Smith noted that they reviewed this question at the May 13, 2016, meeting, however this question was complicated by the fact that so many of the African American defendants were sentenced in Baltimore City, which has among the lowest average juvenile scores in the state but also the lowest rate of sentence severity.

Judge Lewis inquired as to whether this data was indicating that white defendants recidivate at a higher rate than African American defendants but are less likely to get incarcerated. Judge Lewis noted that when you recidivate as a juvenile, it may not result in detention. Dr. Smith stated that this was not what the data indicate. Judge Lewis further asked whether these measures of recidivism indicate that the defendants are being brought to the court's attention; brought to the court's attention and “found involved” (the terminology used in juvenile courts); or brought to the court's attention, found involved, and committed to a detention center. Dr. Smith clarified that their data are limited to adult recidivism. Dr. Smith also noted that their study sample was limited to 18-22 year old defendants with at least one conviction in circuit court, and she calculated their recidivism rates based on the five previously mentioned recidivism measures. Mr. DeLeonardo clarified that Dr. Smith was



stating that among African American and white defendants with the same juvenile score, white defendants were more likely to be reconvicted and re-incarcerated in the DOC than African American defendants and this is due, in part, to the criminal justice system in Baltimore City relative to the rest of the state.

Judge Lewis noted that there was nothing in the data to indicate the severity of the magnitude of the subsequent charge. Dr. Smith noted that the recidivism measures did differentiate between person versus other charges and convictions.

Mr. DeLeonardo stated that rearrest was a troubling measure to use to measure recidivism, as many factors influence arrest rates practices. He stated that reconviction is a better measure of recidivism.

Dr. Smith then reviewed the current and alternative juvenile record scoring methods and the failures found with four of the methods. Dr. Smith noted that the commitment-only alternative scoring method (“0”=zero commitments; “1”=1 commitment; “2”=2+ commitments) produced what Dr. Smith termed a “flat-lining” effect, in that there was little difference in the recidivism rates among those with a juvenile score of one versus two points. The adjudications-only #1 alternative method of scoring the juvenile record (“0”=zero adjudications; “1”=1-3 adjudications; “2”=4+ adjudications) produced a marked decrease in the number of defendants who scored two points. Dr. Smith noted that if a three-category system is used to score the juvenile record, there should be defendants who fall into each of the three categories (0, 1, and 2 points). The adjudications-only #3 alternative method of scoring the juvenile record (“0”=0-1 adjudication; “1”=2 adjudications; “2”=3+ adjudications) also produced little difference in the recidivism rates among those with a juvenile score of one versus two points, particularly among African American defendants (i.e., flat-lining effect). The five-year decay method of scoring the juvenile record (i.e., the method most commonly used by practitioners now) again produced little difference in recidivism among African American defendants with a juvenile score of one versus two points (i.e., flat-lining effect). The replicated worksheet score presented a “false positive” problem for African American defendants on two measures of recidivism (reconviction on any charge and re-incarceration in a DOC facility), in that white defendants who scored two points on the juvenile score had higher recidivism rates than African American defendants who scored two points on the juvenile score. The replicated worksheet score also noticeably increased the number of defendants who received one or two points, more so among African American than white defendants.

Dr. Smith then reviewed the adjudications-only #2 alternative scoring method (“0”=0 adjudications; “1”=1-2 adjudications; “2”=3+ adjudications). Dr. Smith noted that alternative method performed as well as the current scoring method. Dr. Smith noted that this scoring method most maximized the differences in recidivism among defendants with 0, 1, or 2 points. This is because it creates a “true zero” category in that those defendants who score zero have zero juvenile adjudications. Dr. Smith noted that there is a “false positive” problem among white defendants using the adjudications-only #2 scoring method, in that African American defendants who score zero or one point have higher rates of recidivism than white defendants; however Dr. Smith noted that this is an issue seen across all of the scoring



methods. Dr. Smith noted that the most equal outcomes for African American and white defendants occur when looking at their 3-year recidivism outcomes. Dr. Smith additionally noted that the adjudications-only #2 scoring method increased the number of people who scored one or two points.

Dr. Smith reviewed the results of a logit regression run to compare the adjudications-only #2 score to the actual worksheet scores, while controlling for age, gender, offense, and adult criminal history. Dr. Smith noted that in terms of explanatory power, the adjudications-only #2 score is competitive with or better than the actual worksheet scores.

Dr. Smith presented a graph displaying the average delinquency score by age as measured by four different scoring methods (actual worksheet score, five-year decay method, replicated worksheet score, and adjudications-only #2 method). Dr. Smith noted that she employed the five-year decay rule when calculating the adjudications-only #2 alternative score, and that this rule would be different from the current instructions provided in the Maryland Sentencing Guidelines Manual. Dr. Smith indicated that the graph illustrates that the adjudications-only #2 score produced the most defendants with scores of one or two points at age 18, however once defendants reach age 21 or 22, the number of defendants who scored one or two points appears similar across the four scoring methods.

Mr. DeLeonardo questioned whether mandating the five-year decay rule would make the recidivism results more accurate, or whether it would just replicate the current scoring method. Dr. Smith stated that it would not make the results more accurate. Dr. Smith stated that they applied the five-year decay in their analyses so as to least disrupt the current practices in place among practitioners scoring the juvenile record, as this is the method most commonly used now. Dr. Johnson asked whether imposing the five-year decay factor improved the model's ability to predict recidivism. Dr. Smith stated that she could not answer that question.

Judge Lewis noted that as a judge she wants to know about a defendant's entire juvenile history so that she may look to see if there is a progression in criminal activity. Judge Lewis suggested that imposing the five-year decay rule would mean that judges would not know about the defendant's prior juvenile history beyond the past five years. Mr. DeLeonardo noted that the judge would still know about the defendant's juvenile history beyond the past five years, it just would not be counted towards the defendant's juvenile score. Judge Lewis noted that the defense will argue that because of the five-year decay rule, the judge should not take any juvenile history beyond the past five years into consideration, even outside of guidelines calculations. Judge Lewis further stated that we should not require the five-year decay rule just because that is the most common interpretation of the current instructions. Mr. Finci noted that crime-free time in the community is always a mitigating factor at sentencing.

Judge Lewis noted that the analyses have shown that there is not big difference in recidivism among defendants who score one versus two juvenile points. Dr. Smith agreed and stated that what matters the most when determining recidivism is whether the defendant has a juvenile record. She stated that the juvenile record is like an "on-off switch." Dr. Smith noted that this



finding is due, in part, to the fact that the population of defendants in this study already has at least one adult conviction.

Dr. Johnson inquired as to whether Dr. Smith thinks that any alternative scoring methods (which appear to perform similar to the current scoring method) are better than the current system in place, particularly considering that the alternative methods will increase the number of defendants who score one or two points. Dr. Smith noted that one purpose of the study was to determine whether there should be some change in the juvenile scoring instructions provided to practitioners and whether additional training was necessary. Mr. DeLeonardo noted that the Commission previously discussed the difficulty in defining commitment (a measure used in the current juvenile score), and that the adjudications-only #2 method would eliminate that issue as the method does not take into account juvenile commitments.

Mr. Finci inquired as to how offense severity would be accounted for if the juvenile score counts adjudications only. Dr. Smith noted that the alternative models analyzed do not address adjudication severity. Dr. Smith further noted that commitments would be hard to include in the juvenile score now because they are so rare. Eighteen- to 22-year old defendants with juvenile adjudications now may have a different risk profile than those adjudicated before the dramatic decrease in DJS adjudications.

Dr. Smith stated that the next steps for her team would be to assemble a final technical report on the project, which would include information from the first three reports. They will then share their results with the DJS and the Department of Public Safety and Correctional Services (DPSCS). Dr. Smith anticipates that the report will be ready for public release by the fall of 2017. Judge Lewis suggested that information regarding the decrease in DJS adjudications and commitments and their relationship to the implementation of risk and needs tools at the DJS be included in the final report. Dr. Smith agreed.

Dr. Soulé inquired as to whether the Guidelines Subcommittee should review the final report first and then bring forward a specific recommendation for the juvenile score at the September 19 meeting. Judge Avery agreed that it should. Judge Harrell suggested that any changes to the juvenile score be put on the agenda for the December public comments hearing and that the September 19 Commission meeting would be used to review the final report and the Guidelines Subcommittee's recommendations. Dr. Soulé noted that the Commission could take action at the September 19 meeting and then call for public comments regarding any potential modifications to the juvenile score at the December public comments hearing. The Commission agreed with the plan.

Senator Cassilly inquired as to the key takeaway message from the project. Dr. Smith stated that the Commission could think of it as a decision tree. The question is whether to keep the current juvenile scoring method or to choose an alternative method. If Commissioners choose to keep the current scoring method, it would need to be decided whether the five-year decay rule should be incorporated into the instructions and what type of practitioner training and follow-up is required. If Commissioners choose an alternative method, it would have to be decided which alternative method to use. Dr. Smith suggested that the adjudications-only #2





method is really the only alternative option to consider given the noted flaws with the other options.

Judge Harrell requested that Dr. Soulé send Dr. Smith's presentation to the Commissioners who missed the meeting and field any questions to Dr. Smith. Judge Avery requested that Dr. Smith join the Guidelines Subcommittee meeting in September to review the final report. Dr. Smith agreed to participate.

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

### **a. Update on study on alternatives to incarceration (Status report)**

Judge Avery reminded the Commissioners that the Justice Reinvestment Act (JRA) requires the MSCCSP to submit a final report on alternatives to incarceration by January 2018. Judge Avery noted that the draft report corrects a misconception that a judge has to deviate from the sentencing guidelines to impose a sentence with an alternative to incarceration. The MSCCSP report should clarify this matter.

Dr. Soulé noted the MSCCSP distributed surveys to Administrative Judges, local correctional administrators and Parole and Probation agents in each of Maryland's 24 jurisdictions and received a response from at least one individual from each jurisdiction. Dr. Soulé further noted that where the MSCCSP received a response from more than one individual within the same jurisdiction, there were discrepancies. This led directly to the recommendation that there needs to be efforts to address this issue.

Judge Avery indicated that this was an important takeaway and that if the MSCCSP surveyed more judges, she would expect even more diversity in the answers. Judge Avery further indicated that she believed that the survey will provide guidance to legislators and administrators within the judiciary in terms of what is needed. Judge Avery stated that to make the report as useful and functional as possible, the Guidelines Subcommittee questioned whether the current sentence matrices should directly incorporate alternatives to incarceration into individual cells. Judge Avery noted that the Guidelines Subcommittee agreed that the guidelines do not need to be altered for judges to impose alternatives to incarceration: judges only need to suspend a portion of the sentence and employ some alternative to incarceration that meets the criminogenic needs of the offender. Judge Avery further explained that including alternatives to incarceration into the matrices overcomplicates an already complicated exercise.

Judge Avery indicated that the Guidelines Subcommittee and invited guests, Joseph Clocker and LaMonte Cooke, agreed that the MSCCSP should take a simpler approach in terms of making recommendations in the required report. This should include a policy statement to judges that pursuant to the JRA and other stated public policy, judges should re-evaluate and consider alternatives to incarceration during sentencing. Dr. Soulé further noted that the Guidelines Subcommittee and invited guests agreed that the MSCCSP should focus on providing greater education on alternatives to incarceration and work to promote a culture change where judges feel more comfortable sentencing individuals to alternatives to



incarceration. Dr. Soulé drew the Commissioners attention to page 9 of the memo entitled, *Update on Study on Alternatives to Incarceration*.

Judge Avery stated that the central repository for information is necessary and that the lack of information is a chronic and continual problem. Dr. Soulé indicated that this was included in the memo entitled, *Update on Study on Alternatives to Incarceration*, as recommendation number 7, which indicates that the state should fund a state agency to create a website, similar to the Maryland Community Services Locator, to maintain and disseminate information on available alternatives to incarceration. This website should allow individuals to look up possible alternatives to incarceration by jurisdiction and the website would be maintained and regularly updated. Judge Avery noted that, while the MSCCSP could be designated to complete this task, it would need to be staffed and funded to do so. Regardless of which agency assumes responsibility for this task, it must be centralized and it must have a statewide reach.

Mr. DeLeonardo questioned whether the statewide compilation of alternatives to incarceration was referring to government services or private services. Judge Avery indicated that non-profit, private, local jurisdictional and governmental programs should all be included. Mr. DeLeonardo indicated that the difference in surveys was probably due to exposure to the program, especially when considering private programs. Judge Avery indicated that, for example, in Baltimore City, there are no evidence-based or outcome-based ranking systems of drug treatment programs, but this may be for another day. However, a central repository could at least allow advocates to know which programs exist in the jurisdiction.

Senator Cassilly questioned whether these programs are programs in detention centers or programs used to enhance probation and parole. Senator Cassilly further noted that there might be a downside to classifying all of these programs as alternatives to incarceration, because this may remove funding from jail programs or probation programs. Judge Avery noted that the Commission should take Senator Cassilly's comment under advisement and the Commission needs to consider the language used moving forward. For example, weekend confinement is typically used as an alternative to incarceration, but is actually a form of incarceration. Judge Avery stated that knowing what the alternatives are will be a step towards evaluating these programs and in determining the disparities between regions, both in terms of what each region has and what is working.

Senator Cassilly indicated that there is a legislative difference between resources and alternatives to incarceration. However, the MSCCSP may also want to consider enhancing the quality of incarceration, the quality of probation and the quality of parole. Judge Avery indicated that any Commissioners who would like to make suggestions as to the language of the recommendation should email Dr. Soulé.

Dr. Soulé noted that the recommendations are starting points and that the MSCCSP will need to refine the recommendations. Mr. DeLeonardo questioned what currently qualifies as an alternative to incarceration. Dr. Soulé indicated that corrections options is defined in the Maryland Sentencing Guidelines Manual (MSGM) as home detention, inpatient drug or



alcohol treatment under HG, § 8-507 commitments, participation in a drug court or HIDTA substance abuse treatment program or any program under law which requires the individual to participate in home detention, inpatient treatment, or other similar programs involving terms and condition that constitute the equivalent of confinement. Mr. DeLeonardo replied that the guidelines rules regarding alternatives to incarceration currently require some level of supervision. Dr. Soulé indicated that effective October 1, 2017, any drug possession offenders mandated to drug treatment would also be considered a corrections options and a guidelines compliant sentence.

Dr. Soulé then asked if the MSCCSP should consider further expanding this definition of corrections options. Mr. Cooke indicated that Superintendent Terry Kokolis of Anne Arundel County has several levels of this type of programming and he may be a good source of information. Judge Lewis indicated that the Commission must address the fact that each detention center currently has different programs. Judge Lewis further noted that when incarcerated individuals are leaving prison facilities, they are directed to call 3-1-1 to receive any necessary counseling, social services or housing help (the actual number is 2-1-1). Dr. Soulé further noted that many correctional facilities now provide inmate access to the Maryland Community Service Locator, which provides similar information.

Judge Avery noted that Dr. Soulé will be presenting at the Judicial Conference about this required report and this training will be looking at both alternatives to incarceration and alternatives to pretrial detention. Judge Avery indicated that judges attending this program may also provide feedback that will be useful for the final report. Ms. Domer questioned whether alternatives to incarceration also include programs within detentions centers that, upon competition, allow for reduced sentences. Mr. Cooke indicated that there are a variety of these programs that are available and the MSCCSP should get more information about these programs. Senator Cassilly stated that he was concerned that there was not a focus on the programs offered during incarceration.

Judge Avery stated that the Commission's role should focus on the moment of sentencing and what courts have at their disposal. Dr. Soulé noted that the recommendations are divided into the following categories: actions the Commission could take relative to the sentencing guidelines and actions that other state agencies could take. Dr. Soulé stated that the final report could make recommendations outside of the guidelines applicability.

Dr. Soulé also indicated that the survey asked respondents to focus on programs that were not jail-based because jail-based programs are not alternatives to incarceration. However, there were still many responses about pretrial diversion programs. Dr. Soulé noted that the recommended website or database should identify a wide-range of programs, not just programs that apply to the sentencing guidelines. Judge Avery noted that the website should also note gaps in availability.

Judge Avery noted that the Guidelines Subcommittee also recommended a reformation of the presentence investigation (PSI) report. Judge Avery believes that this is an opportunity for the MSCCSP to make a statement that the PSI report should be more reflective of the actual



criminogenic needs of the offender, so that the judges are better informed as to what the offender needs and what the options and resources are for that offender in the community. Judge Avery noted that the Division of Parole and Probation should develop a risk assessment, of 10 or 20 questions, as this would be more helpful than the current report. Judge Lewis noted that in the area of mental health, there is a presentence evaluation that the Department of Mental Health and Hygiene performs and this report suggests what programs would be the most beneficial to the specific defendant.

b. Review of language in MSGM regarding judge's responsibility to review the guidelines worksheet for accuracy and completeness (**Action item**)

Judge Avery noted that the Guidelines Subcommittee also looked at the language in the MSGM, which currently states that judges shall review the worksheets for completeness and for accuracy (but this is not currently in the Maryland Automated Guidelines System or MAGS). A judge called this language into question by saying that judges should not be required to police the accuracy of the guidelines worksheets that are presented. The Guidelines Subcommittee had a disagreement about how this statement should be changed in the MSGM. After a robust discussion, a majority vote accepted the following recommended statement: *Regardless of who completes the worksheet, the court shall review the worksheet to confirm that the guidelines reflected on the worksheet were considered in the respective case.*

Judge Avery indicated that judges are essentially required to confirm that they considered the guidelines that were before them. The Guidelines Subcommittee agreed that if there is a dispute over the guidelines, the judge must settle the dispute but should not certify the accuracy of the worksheet. Dr. Soulé stated that there was a unanimous decision to change the language, but there was a discrepancy as to what the judges should agree to review. Mr. Finci indicated that the Guidelines Manual does not indicate that the judges must resolve disputes. Dr. Soulé noted that the language in the manual implies that the judge must resolve disputes. Mr. Finci stated that he believed that judges should certify that they resolved any disputes in the calculation of the guidelines and that they applied this guidelines to this sentence, but that this discussion should be tabled for now and that the MSCCSP should further discuss this as the JRA continues to be implemented.

Judge Avery noted that the language the Guidelines Subcommittee voted on was a simpler way to change the responsibility of accuracy without overcomplicating the issue. Mr. Finci reminded those who are not practitioners that the guidelines have become a focal point of plea negotiations and the calculation of the guidelines is not always in the plea negotiations. Someone calculates the guidelines and when the guidelines come before the judge to make a decision in applying the guidelines, this is critical to the sentence that the defendant receives. Judge Avery said that the MSCCSP does not adopt a Federal Guidelines viewpoint to the Maryland Guidelines. Maryland judges are not bound by the guidelines as the guidelines are not determinative and there is no due process remedy for an error in the guidelines. There is a reason for this distinction that must be honored.



The Commission proceeded to a vote to adopt the new recommended language. Judge Avery made a motion to adopt the proposed language to read “Regardless of who completes the worksheet, the court shall review the worksheet to confirm that the guidelines reflected on the worksheet were considered in the respective case” in both the Maryland Sentencing Guidelines Manual and in COMAR. The Commission voted unanimously to accept the proposed language.

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

### **a. Update on MAGS deployment**

Dr. Soulé informed the Commission that since the last meeting in December, MAGS has been deployed in Allegany, Garrett, and Washington counties in the 4<sup>th</sup> Judicial Circuit. MAGS will next be deployed in Caroline and Talbot counties on July 1, 2017, followed by Kent and Queen Anne’s counties on October 1, 2017. MSCCSP staff will be conducting MAGS orientation and training sessions prior to these deployment dates.

### **b. Update on review of new and revised penalties from 2017 Legislative Session**

Dr. Soulé noted that the staff is currently reviewing legislation from the recently concluded General Assembly session to identify new and/or amended criminal penalties. This information, along with staff recommendations for seriousness category classifications will be presented to the Guidelines Subcommittee in preparation to bring forward recommendations to the full Commission at the July 12, 2017, meeting. Dr. Soulé further noted that assuming the Commission adopts proposed classifications at the July meeting, the staff will complete a timely submission of the classifications as proposed regulations to be adopted on or around November 1, 2017. In the meantime, the staff will submit the proposed regulations related to the JRA that were previously voted on by the Commission last year, so that the JRA-related regulation amendments can be adopted October 1, 2017, to coincide with their legislation enactment date.

### **c. Update on MSCCSP FY 2018 budget**

Dr. Soulé provided an update on the MSCCSP FY 2018 budget and reminded Commissioners that two over-the-target requests were submitted for FY 2018. The first priority over-the-target request was submitted to establish a dedicated funding source for updating and maintaining MAGS. The second over-the-target request was submitted to increase the summer hours for the MSCCSP’s part-time policy analyst position (staffed by a graduate assistant) to allow this individual to work 40 hours per week during the 10 week summer period. Due to the fiscal conditions of the State, Dr. Soulé advised that over-the-target requests were granted in very rare circumstances and that unfortunately, both of the MSCCSP over-the-target requests were denied. However, Dr. Soulé advised that after working with DPSCS and the Governor’s Office of Crime Control & Prevention (GOCCP), a one-year grant of federal funds was secured to address the funding needs related to MAGS. In response, the staff has already submitted a list of priority updates and enhancements for MAGS, and the DPSCS programmers will begin work on these enhancements July 1, 2017, utilizing the funds made available through this grant.



d. In memoriam: former MSCCSP chair, Judge Howard Chasanow

Dr. Soulé acknowledged the passing of former MSCCSP chair, Judge Howard Chasanow, and recognized his significant contributions to the sentencing guidelines in Maryland. He noted that Judge Chasanow served in various capacities on the board that created the sentencing guidelines in Maryland, the study commission which further developed the guidelines and finally, the permanently established MSCCSP. Dr. Soulé stated that the Commission and state sentencing policy in general has benefited greatly from Judge Chasanow's involvement.

**8. Date, time, and location of the next Commission meeting.**

The next meeting is scheduled for Tuesday, July 11, 2017, at the Judiciary Education and Conference Center at 5:30 p.m.

**9. Old business**

With regard to the JRA, Judge Harrell stated that the report on alternatives to incarceration was assigned specifically to the Commission, but noted that the MSCCSP was referenced elsewhere throughout the bill. He further noted that although the Commission was not designated as the sole "worker bee" to carry out additional tasks, he does not want the Commission to get caught short with a deadline. Thus, Judge Harrell indicated he has communicated with Judge Daniel Long, chair of the JRA oversight board, in hopes that meetings and collaboration between the Commission and other various agencies referenced in the JRA will take place shortly.

**10. New business and announcements**

None.

The meeting adjourned at 7:58 p.m.