



## Minutes

Maryland State Commission on Criminal Sentencing Policy  
2021 Public Comments Hearing  
Videoconference  
December 7, 2021, 5:00 p.m.

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

Honorable Brett R. Wilson, Chair  
Honorable Shannon E. Avery, Vice-Chair  
Honorable J. Sandy Bartlett  
Richard A. Finci, Esq.  
Secretary Robert L. Green  
Melinda C. Grenier  
Robert H. Harvey, Jr., Esq.  
Brian D. Johnson, Ph.D.  
Honorable Patrice E. Lewis  
Alethea P. Miller  
Honorable David Moon  
Kathleen C. Murphy, Esq. *representing Attorney General Brian E. Frosh*  
Honorable James P. Salmon  
Kyle E. Scherer, Esquire  
Lisa M. Spicknall-Horner  
Honorable Charles E. Sydnor, III  
Honorable Christopher R. West  
Donald E. Zaremba, Esq. *representing Public Defender Paul B. DeWolfe*

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

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

### **Speakers:**

Judge Phillip Caroom, Maryland Alliance for Justice Reform  
Honorable Albert J. Peisinger, Jr., State's Attorney for Harford County

**Note: The views expressed in the Public Hearing testimony are those of the speaker(s) and do not reflect the official policy, position, or opinions of the Maryland State Commission on Criminal Sentencing Policy (MSCCSP). The MSCCSP does not endorse the content of the testimony, nor does it guarantee the accuracy, reliability, or completeness of the information.**

The Public Comments Hearing began at 5:05pm when Judge Wilson called the meeting to order and welcomed everyone to the annual hearing.



Judge Wilson began by thanking the Commission staff for their hard work and for making sure the Commission continued to move forward during the pandemic.

Judge Wilson then asked the Commissioners to introduce themselves, starting with Delegate Moon, who was on a time constraint. The Commissioners then introduced themselves and briefly described their role on the Commission.

Following the introductions, Judge Wilson asked Dr. Soulé to provide an introductory presentation for the hearing.

Dr. Soulé indicated that the presentation would begin by providing background information about the Commission including the purpose, goals, and objectives of the MSCCSP and the sentencing guidelines. The second portion of the presentation would focus on the recent amendments to the sentencing matrices for drug and property offenses that had been tentatively adopted by the Commission.

Dr. Soulé noted that Maryland was one of the first states to initiate a sentencing guidelines system. The Maryland Judiciary instituted the concept of sentencing guidelines in the late 1970s in response to concern about unwarranted sentencing disparity. In April 1979, the Guidelines Advisory Board, formed by the Judiciary, approved a system of voluntary guidelines to be piloted in four jurisdictions. These sentencing guidelines were then approved for statewide use in the circuit courts starting in 1983. The guidelines in Maryland were in effect statewide for about 15 years with oversight by the Judiciary. Then in 1999, the Legislature created a permanent, independent sentencing commission to have oversight over the sentencing guidelines.

Dr. Soulé explained that the MSCCSP is an independent, objective agency comprised of a balanced board of 19 members, a cross-section of criminal justice officials from all three branches of government as well as two public representatives.

Dr. Soulé stated that the enabling legislation that created the MSCCSP outlines a statement of intent in Criminal Procedure Article (CP), § 6-202 that includes the following six goals:

- (1) Sentencing should be fair and proportional and sentencing policies should reduce unwarranted disparity, including any racial disparity, in sentences for criminals who have committed similar crimes and have similar criminal histories;
- (2) Sentencing policies should help citizens to understand how long a criminal will be confined;
- (3) Sentencing policies should preserve meaningful judicial discretion and sufficient flexibility to allow individualized sentences;
- (4) Sentencing guidelines should be voluntary;
- (5) The priority for the capacity and use of correctional facilities should be the confinement of violent and career criminals; and
- (6) Sentencing judges in the State should be able to impose the most appropriate criminal penalties, including corrections options programs for appropriate criminals.



Dr. Soulé stated that the Commission has a few primary responsibilities to help address these goals. The first responsibility is to implement and maintain the State's voluntary sentencing guidelines. This is accomplished through the second major responsibility, which includes the collection and maintenance of a database assembled via data submitted on the sentencing guidelines worksheets. The Commission uses the guidelines data to monitor circuit courts' sentencing practices. The Commission also examines sentencing patterns and reasons for departure for specific offense categories and within individual cell ranges to consider changes to the guidelines when necessary. Finally, the Commission is responsible for providing training to criminal justice practitioners to promote the consistent application of the guidelines and the accurate completion of the guidelines worksheet.

Dr. Soulé then provided an explanation of what the sentencing guidelines are, explaining that the sentencing guidelines are a mechanism to encourage proportional, fair, and just sentences. The guidelines are a framework that systematically account for common factors a judge considers in a typical case by identifying and assigning weights to core, objective factors for consideration by judges in making sentencing decisions. This allows judges to consistently assign the same value or weight as their colleagues around the state with each of these factors. The primary goal of the guidelines is to promote fair, consistent, and equitable sentencing practice, whereby offenders who commit similar offenses and who have similar criminal histories are treated alike.

Dr. Soulé stated that the best way to explain how the guidelines work was to offer an example. He explained that the guidelines are scored on two key factors: the offender's prior record, and the seriousness of the offense. There are three matrices for three broad categories of offenses: person offenses, drug offenses, and property offenses.

Dr. Soulé displayed the Sentencing Matrix for Property Offenses and explained that the guidelines recommend whether to incarcerate someone and if so, provide a recommended sentencing range. Referring to the sentencing matrix, he explained that the first column on the left represents the offense seriousness category and noted that property offenses are ranked in seriousness from VII being the least serious to II being the most serious. The top row represents the offender score, which is a summary scale that ranges from 0 to 9, and measures an offender's criminal history.

Dr. Soulé then provided an example, where an offender with no prior record (with an offender score of 0), is convicted of theft less than \$100 (which is a category VII property offense). The guidelines range would be probation to one month, which is indicated by the grid cell intersection of the offender score 0 and the offense seriousness category VII.

Dr. Soulé stated that the guidelines help achieve proportionality as they present incremental increases going from left to right as the offender criminal history increases from minor to serious. The guidelines also reflect offense severity and provide proportional incremental increases going from the top to the bottom as the offense conviction ranges from minor to more seriousness. The two-dimensional grid allows the guidelines to account for the most common, but certainly not all, characteristics that are most relevant in most sentencing decisions.



Dr. Soulé stated that there are a few basic principles regarding the Maryland voluntary guidelines. First, they are voluntary. Judges may, at their discretion, depart from the guidelines. The guidelines are also intended to be primarily descriptive. They are not intended to tell judges how they should sentence; rather, they are informed by data and are intended to illustrate to judges how their colleagues are sentencing on average in a typical case. The descriptive nature of the guidelines means that they are not intended to be static; rather they are dynamic and may be amended when the data indicate that sentences are not consistent with the recommended ranges. Finally, Criminal Procedure Article Section § 6-216 indicates that the circuit court judges shall consider the guidelines at sentencing, but again, the judges retain the option to sentence above or below the guidelines.

Dr. Soulé explained that, given the primarily descriptive nature of the guidelines, it is important to examine whether current sentences are consistent with guidelines ranges. Guidelines compliance review is statutorily required by the Commission's enabling legislation and is one of the primary responsibilities of the Commission. The Commission's annual reports provide detailed analyses of compliance with the guidelines by crime category, judicial circuit, and other measures. Additionally, the Commission periodically compares a more detailed cell-by-cell analysis every 3-5 years. The cell-by-cell analysis reviews data in each intersecting grid cell of the three matrices to consider whether changes to the guidelines are warranted. The Commission initiated its most recent cell-by-cell analysis in May 2021. The review spanned four meetings and examined single count sentencing data from calendar years 2018-2020. This multi-stage review culminated in proposed amendments to the sentencing matrices for drug and property offenses. The proposed amendments were tentatively approved by the Commission on November 10, 2021. Dr. Soulé stated that the amendments may be viewed on the Commission's website, and the presentation illustrated a link to the amendments.

Dr. Soulé explained that the primary rationale for supporting the proposed revisions is that the guidelines are most meaningful and relevant when they are regularly reviewed and when they are consistent with current sentencing trends.

Dr. Soulé stated that before he summarized the proposed revisions, it was important to note a general framework for how the revisions were proposed. The proposed revisions are intended to strike a balance between a strictly descriptive middle 65% percent of current sentences and the number of months in each range, and the proportionality of ranges across cells. The Commission examined the middle 65% of sentences because it reflects the average or middle sentence for a particular cell while excluding outlier sentences on either end of the range. The proposed revisions move the guidelines substantially closer to the middle 65%. However, they do not correspond strictly to the middle 65%, as they also offer proportional incremental increases going across the matrices as the offender criminal history score increases, and down the matrices as the offense severity increases.

Dr. Soulé then displayed a table which summarized the proposed revisions to the Sentencing Matrix for Drug offenses. The table showed three rows for each cell. The first row, in red font, showed the middle 65% of sentences, with the total number of cases listed in parentheses. The second row, in the blue font, showed the current guidelines range, and the number of months between the lower and upper range. The final row (the third row), in green, provides the



proposed guidelines range and also indicates in parentheses the number of months between the lower and upper ranges. Cells highlighted in yellow have a strict compliance rate of less than 65%, and there's at least 50 cases in that cell, while cells highlighted in light blue have a strict compliance rate of less than 65% and fewer than 50 cases. The yellow highlighting throughout the drug offense matrix indicates that there are 9 cells with at least 50 cases with a strict compliance rate of less than 65% based on the proposed revisions, compared with 15 cells in the current matrix. As a result, the proposed revisions would result in more compliance within the matrix. All of the revised cells with 50 or more cases have a regular compliance rate of greater than 65% in the proposed regions.

For illustrative purposes, Dr. Soulé highlighted the drug offense matrix grid cell with an offender score of 1 and a seriousness category of III-B, explaining that the first row, in red font, indicates that the middle 65% of sentences for this cell is probation to 18 months, and the number of sentences in this cell from 2018-2020 was 496. The second row, in the blue font, indicates that the current guidelines range is 1 year to 3 years, and the yellow highlighting indicates that fewer than 65% of sentences fall within that range. The third row, in the green font, indicates the proposed range, which is probation to 18 months. The absence of yellow highlighting indicates that at least 65% of sentences are within that proposed range. Accordingly, the proposed revisions would change this cell so that more than 65% of sentences would be strictly compliant with the guidelines.

Dr. Soulé next addressed the proposed ranges for the Sentencing Matrix for Property Offenses, showing a slide indicating that the proposed revisions would result in increased compliance with the guidelines, reducing the cells with at least 50 cases and strict compliance of less than 65% from 14 to 6. Further, all of the revised cells with at least 50 cases would have a regular compliance rate of 65%.

Dr. Soulé then addressed some of the common questions that had been raised regarding the proposed revisions. The first question was whether the proposed revisions were intended to reduce sentences for drug offenders, particularly those convicted of drug distribution. Dr. Soulé explained that the proposed revisions were NOT intended to reduce sentences or change sentencing; rather, the proposed revisions amend the guidelines to more accurately reflect recent sentencing trends. In other words, the proposed revisions more closely align the guidelines with how judges are currently sentencing. Dr. Soulé emphasized that the sentencing guidelines are not intended to say what judges should do, or to say what sentences the State should recommend. The guidelines are intended to reflect the average sentence that has been imposed based on analysis of sentencing guidelines data. Further, it is important to remember that the guidelines are voluntary and that judges retain the option to sentence above or below the guidelines.

Dr. Soulé then moved on to address the second question, which is whether the proposed revisions reflected sentencing "discounts" due to the COVID-19 pandemic, explaining that the answer to that question is "no." The MSCCSP specifically examined this question, and the analysis identified that approximately 13% of the sentencing events during the three year 2018-2020 period occurred during COVID, and there were very few differences in strict compliance rates by matrix and cell when those sentences were excluded with strict compliance rates varying by no more than a few percentage points. In summary, the inclusion of 10 months of data from



the start of the pandemic does not alter the sentencing trends for this 3-year time period and therefore the Commission included all sentencing events to maximize the number of sentencing events that inform this review.

The final question to consider is whether the proposed revisions reflect sentencing trends statewide, or whether they reflect sentences from one or two larger jurisdictions. The answer is that the proposed revisions are based on analysis of statewide sentencing trends; the guidelines are intended for statewide use and are not intended to reflect jurisdiction-specific sentencing. There was some concern that the proposed guidelines for the III-B drug offenses may be skewed or too heavily influenced by sentences from the 8<sup>th</sup> judicial circuit as that circuit accounts for a disproportionate number of III-B drug offense sentences. Accordingly, an analysis was completed to examine the sentences for III-B offenses separately for the 8<sup>th</sup> circuit versus all other judicial circuits. This analysis found that the average sentences in the 8<sup>th</sup> circuit do trend lower; however, the sentences in the other jurisdictions also trend lower than the current guidelines ranges, confirming that the proposed revisions are warranted. Further, the proposed revisions are more closely aligned with the sentences from the other jurisdictions than the sentences in the 8<sup>th</sup> circuit, which should eliminate concern that the proposed revisions are being driven by trends from a particular jurisdiction.

Dr. Soulé then noted that the Commission's by-laws permit the Commission to, among other things, approve a proposed action subject to receiving public comment. At the November 10, 2021 meeting, the Commission voted to tentatively adopt amendments to the sentencing matrices for drug and property offenses. The Commission then issued a call for public comment, and today's hearing provides an opportunity to hear feedback on the proposed amendments and/or any other sentencing policy-related issues. The Commission may vote to officially adopt the proposed revisions to the property and drug matrices at the business meeting that will immediately follow today's public hearing. Dr. Soulé stated that anyone interested in a more detailed explanation of the guidelines compliance review, and how the proposed guidelines amendments were developed, may access a video on this topic accessible on the Commission's YouTube channel, at the link provided in the slide. More information about the guidelines in general, or about the work of the MSCCSP, may be found at the Commission's website, [www.msccsp.org](http://www.msccsp.org). Dr. Soulé also invited anyone to contact the Commission at the phone number and e-mail provided in the presentation. Finally, Dr. Soulé thanked everyone for taking the time to attend the public hearing and stated that the Commission valued their input and looked forward to their feedback.

Judge Wilson thanked Dr. Soulé for his presentation, which provided great insight into how the guidelines are created and the purpose they serve.

Judge Wilson then acknowledged that Senator Sydnor had joined the meeting and asked Senator Sydnor to introduce himself.

Senator Sydnor then introduced himself as senator of District 44 covering both Baltimore City and Baltimore County. Senator Sydnor stated that he had previously served on the Commission when he was in the House of Delegates and is now serving again on the Commission as a senator.



Following Senator Sydnor's introduction, Judge Wilson asked Dr. Soulé to introduce the registered speakers for the public comments hearing. Dr. Soulé indicated that the first speaker was Judge Phillip Caroom.

***Judge Phillip Caroom, Maryland Alliance for Justice Reform***

Judge Caroom wished everyone a good evening and thanked them for permitting him to speak again on the same concerns he raised last year. Judge Caroom stated that, as before, he was not speaking to them as a senior judge from Anne Arundel County, but instead as a representative of the Maryland Alliance for Justice Reform (MAJR).

Judge Caroom stated that there were two points he wanted to focus on in his oral comments (he also submitted written comments that he invited Commission members to review). Judge Caroom's first point was to emphasize that one of the goals of the enabling statute of the MSCCSP is to reduce unwarranted disparity, including racial disparity, in sentences for those with similar offenses and histories. He referenced to a Justice Policy Institute study, published in 2019, that implies that Maryland prison sentences are racially disparate. Judge Caroom suggested that the Commission may help address these disparities by examining plea agreements for individuals sentenced to prison.

Judge Caroom noted that other jurisdictions have begun to study this issue, citing a recent Harvard University study. He further noted that other universities have created good studies in Wisconsin, and there are now ten states that are engaged in studies. One of the studies is with a non-profit organization in Montgomery County, Maryland. Judge Caroom stated that his group (MAJR) suggests that the Commission should take this on as an important part of its mission. Judge Caroom indicated his belief that it would be easy to add a few more questions to MAGS to collect new details about pleas and prosecutor charging decisions. MAJR has provided suggested questions at the end of the written testimony, but Judge Caroom encouraged the Commission to use its own judgment and study carefully before taking that next step. Judge Caroom indicated that if additional funding is needed from the Maryland General Assembly to accomplish this mission, then the MAJR encourages the Commission to ask for the necessary budget, as this is an important concern to the Maryland public.

The second and last point that Judge Caroom wanted to make in his testimony was that violations of probation have been discovered in other states as a source of racial disparity. He recalled that the Commission stopped collecting violation of probation guidelines worksheets several years ago because it was too difficult to obtain compliance. However, Judge Caroom stated that things have changed since then, and asked the Commission to revisit that decision. As an example, he noted that the Justice Reinvestment Act (JRA) created statutory guidelines ranges for technical violations of probation. It is presumed that for a first technical violation, the sentence is 15 days. For a second technical violation, the sentence is 30 days. For the third, 45 days. He noted that there was a study by the Office of the Public Defender which indicates that there are a significant number of jurisdictions where there are violations of these guidelines, and a very significant part of the violation is relating to pre-trial release. Judge Caroom noted there are some individuals who do not even get a probation violation trial date before they have been detained longer than



the presumptive technical violation time. Judge Caroom indicated this should be a concern to the Commission, and it should be a concern to the public.

Judge Caroom then referred Commissioners to a prior study completed by the Urban Institute. While displaying a bar graph to discuss the study, Judge Caroom explained that the study found, based on an examination of four different jurisdictions in four states, that the violation of probation procedure was one of the single-most racially discriminatory functions that courts perform. Judge Caroom stated that he did not know if there is fairness and equality in Maryland's violations of probation, but he urged the Commission to request funding if needed to carefully, thoughtfully, and studiously review those two issues: racial disparities in prison sentences, and the implementation of guidelines for technical probation violations.

Judge Wilson inquired whether any Commissioners had questions for Judge Caroom. Mr. Finci asked Judge Caroom whether he had a sense of the source of the racial disparity in the plea bargaining process. Judge Caroom responded that he personally had an intuitive sense he could describe, but that he thought it needed to be studied, because in some of the other jurisdictions they had found different sources. The Harvard study in Massachusetts discovered one issue and the study in Wisconsin found a different issue. One of the main issues is overcharging from the start, that police officers and prosecutors frequently overcharge. The second major component may relate to socioeconomic factors, where an individual who does not have the ability to make a good presentation may find himself in pre-trial detention longer. Judge Caroom noted that there is a well-known phenomenon that individuals in pre-trial detention serve more time, not just in pre-trial, but with the overall sentence. So, some factors that keep people in pre-trial, for example if a jurisdiction does not have a good pre-trial supervision program, that can have more racial impact. Judge Caroom further explained that there may be other socioeconomic factors. For example, if a white defendant walks into court and has a drug problem but has already been in treatment and counseling and makes a really good presentation, the defendant might look better to the judge at the time of sentencing than an African American defendant who does not have the money and cannot get off of the waiting list to have drug treatment before his sentencing date, and does not have counseling or socioeconomic background.

Finally, Judge Caroom noted that over-policing in local jurisdictions is another factor to consider. There are some jurisdictions that are so heavily policed that there is a larger percentage of infractions on a person's record. Therefore, it makes their prior record look worse even though their actual behavior in a middle-class neighborhood of white folks may be very much the same as the section 8 or public housing, which has 24/7 police. Judge Caroom stated that that may be more than Mr. Finci wanted to hear, but he thought again it would be helpful to have studies, including the plea bargaining study, to begin to figure out what the sources are.

Mr. Zaremba asked Judge Caroom if he had had information regarding the percentage of individuals who are serving sentences from the Division of Corrections as a result of violations of probation versus original sentences. Judge Caroom responded that at the time the JRA was being enacted, the answer was 40%. Since the JRA was enacted, he was not sure what the statistics would show and stated that Secretary Green might be able to provide that information. Judge Caroom noted that the Department of Public Safety and Correctional Services maintains a data dashboard with statistics but he was not sure whether the data dashboard statistics would





distinguish between sentences for violations of probation versus those for original sentences. Secretary Green stated that information is not available on the current data dashboard but that he expects it will be available in future renditions of the dashboard.

Judge Wilson asked whether there were any further questions for Judge Caroom. Seeing none, Judge Wilson thanked Judge Caroom for his testimony.

Judge Wilson stated that before Dr. Soulé moved on to the next speaker, he wanted to give Senator West, who had just joined the meeting, a chance to introduce himself. Senator West gave a brief introduction and Judge Wilson then deferred to Dr. Soulé for the next speaker.

Dr. Soulé stated that the next registered speaker was Mike Rothman, a criminal defense attorney. Mr. Rothman e-mailed the Commission earlier that day to advise that while he had planned to attend the hearing, he had a change of plans and was unable to do so. Mr. Rothman did submit written testimony in lieu of appearing in person at the hearing and that testimony was distributed to the members of the Commission. Mr. Rothman's written testimony provided support for the proposed amendments to the sentencing matrices for drug and property offenses.

Dr. Soulé introduced the next speaker, the Honorable Albert Peisinger, State's Attorney for Harford County.

***Albert J. Peisinger, Jr., State's Attorney for Harford County***

Mr. Peisinger thanked Dr. Soulé and greeted the members of the Commission. He stated that from a practical perspective, he wanted to give insight as to how prosecutors and defense attorneys operate, as this may not be reflected in the statistical analysis of the Commission data. Mr. Peisinger stated that as a drug prosecutor for most of his career, the proposed guidelines cell amendments for category III-B drug offenses involving major offenders stood out to him. When looking at the difference between a current guidelines range of 12-20 years, and a proposed range of 4-12 years, what stood out is that the maximum sentence is no longer taken into consideration. The maximum sentence for these offenses is 20 years, and for a defendant who has a major criminal record, the guidelines would say that that individual could do less than eight years of the maximum sentence. Because of this, Mr. Peisinger stated that he would like to provide some insight into how things operate. When looking at the guidelines cell above the category III-B drug offenses, he noted that importation, which is a significant crime, is changing from 10-20 years to 2-8 years. Once again, not taking the maximum sentence of 25 years into consideration. He emphasized that this is a significant drop from 25 years down to 8 years. Therefore, he stated that he wanted to address with the Commission how plea bargains work and further noted that maybe some of the numbers that were analyzed in the guidelines cells may be reflective of three years of plea negotiations.

Mr. Peisinger explained that as a State's Attorney, when a plea agreement is negotiated with a defense attorney, the guidelines drive many of the negotiations. When a defendant knows he is going to get a guidelines sentence from a judge post-trial, the State's Attorney is not going to make a plea offer of a guidelines sentence because there is incentive to try and resolve that case. Accordingly, the prosecutor may start below the guidelines, and then weigh the strengths and



weaknesses of a case. The stronger a case, the higher the offer; the weaker a case, the lower the offer. Mr. Peisinger stated that he did not think this was captured in the data. He noted that it is not the fact that things need to change; it is the significance of the change. And one of the things that cannot be captured in the statistical analysis is how plea bargains may have affected the data that was used for the three-year time period included in the analysis.

Mr. Peisinger further stated that he respectfully disagreed with Dr. Soulé's earlier comment regarding COVID and its effect on the compliance analysis. He noted that he received pressure from the bench to give COVID discounts, but that he responded that there would be no COVID discounts in Harford County. Despite more pressure, he again responded that there would be no COVID discounts and that people would be held accountable for the crimes they commit. It is a public safety issue, not a public health issue. COVID is a public health issue, and Mr. Peisinger stated that he kept the two issues separate. He further stated that in other districts, he had colleagues go on the record and say that they were succumbing to the pressure and were making better deals. He surmised that if his colleagues were saying that their deals were affected by COVID. Therefore, if the data does not show this change, or perhaps showed that COVID did not affect the numbers, he wanted to clarify that his colleagues were affected by the pandemic. Mr. Peisinger further noted that other jurisdictions have taken different philosophies as to the certain types of crimes that are part of these COVID-related changes, and that there is not a statewide policy. He further noted that another concern is that there are 24 elected State's Attorneys, and not all 24 of them operate under the same philosophy. This is also not reflected in the proposed amendments.

Mr. Peisinger stated that he would like to discuss two recent cases in Harford County, to highlight an avenue that those in law enforcement and public safety officials utilize. Drug cases are used to strategically place violent individuals in incarceration when they cannot get other convictions. One of the things that is unique to drug cases is that they have professional witnesses (i.e., law enforcement). They are usually not influenced by individuals that are not afraid to go out and threaten, intimidate, or even kill witnesses that are going to testify against them. So when they have these situations and they know there are individuals who are selling drugs, they investigate further. Mr. Peisinger stated that in Harford County, law enforcement investigates every single overdose case because they want to find out who is selling drugs in their jurisdiction. He noted that it's very difficult to prosecute that crime—selling drugs, which then subsequently results in someone dying—because there is not a specific statute that deals with that specific scenario. He noted that some of his colleagues have tried to use voluntary manslaughter to get these types of convictions, but the maximum penalty is only 10 years. The drug distribution offense carries 20 years, so in Harford County, the State's Attorney's Office goes after the drug dealing aspect, and charges individuals with drug dealing. He encourages other jurisdictions to do the same.

Mr. Peisinger then provided an example in which a decedent's phone was received and knowing that the drug dealer was the last person they contacted, law enforcement placed a cold call to purchase drugs. They are then able to charge that drug activity. He noted that there have been two instances of this in Harford County in the last year. One case resulted in a sentence of 20 years, suspend all but 15; with the other being 20 years suspend all but 14 years—well above the proposed guidelines. However, he noted that the sentences would have fallen well within the



current guidelines. Mr. Peisinger then reiterated that there a lot of practical things that happen every day in the criminal justice system that cannot be accounted for when looking at a data set or cell. He noted that he sees a trend, and his concern is adjusting the entire state based upon a few jurisdictions. He encouraged the Commission to look at each jurisdiction individually, and to hold judges and prosecutors accountable for what is happening in their own jurisdictions because not all 24 jurisdictions are the same.

Mr. Peisinger concluded his testimony by reiterating that he was driven to speak at the hearing because of the significance of the proposed guidelines cell reductions for categories III-B and III-A drug offenses. He noted that this is a significant reduction that sends the wrong message to judges and to criminals, because part of the criminal justice system is to deter crime. And when you are telling a drug dealer that he can make a bunch of money and not have to worry about it because Maryland thinks he should only get 4 years even though he has done it twice before, or the lower end of the guidelines is only 4 years, that cost benefit analysis is probably not going to deter the drug dealer from selling the poison in the community

On a final note, Mr. Peisinger stated that he thought that the Commission, at minimum, should push the proposed amendments off for a year or two, in order to truly understand the impact of COVID. He stated that 10 months of COVID pleas and limited trials are not a true reflection. While acknowledging that he did not have the data to prove that, Mr. Peisinger expressed that he thought a lot of practicality goes into explaining the data, because as a prosecutor, his going to go in and start his negotiations within the guidelines or below the guidelines for the incentive to generate that plea. He further stated that he thought the Commission needed to consider this, and it may be another reason why the guidelines do not need to be adjusted. Once they are lowered, he cannot tell his colleagues to start below 4 years when somebody has already been convicted twice of drug dealing and the bottom of the guidelines is 4 years. Mr. Peisinger opined that it puts a lot of pressure on the judges to say, "Okay, the state wants an upward departure, and now I have to justify it." And the judge should not have to do that. He concluded by saying that the Commission needs to consider what this says to the judges, because as a result of the significant decrease from the current guidelines, they will have to justify every single time an individual needs an upward departure.

Mr. Peisinger stated that he would take any questions and that he appreciated everyone's time.

Judge Wilson asked if any of the Commission members had any questions for Mr. Peisinger. Judge Wilson stated that Mr. Peisinger's comments were clearly and succinctly stated, and that the Commission appreciated Mr. Peisinger's participation and bringing his viewpoint to this state forum. Judge Wilson thanked Mr. Peisinger. Mr. Peisinger thanked Judge Wilson.

Dr. Soulé stated that there was one more individual who signed up for the hearing, but she was not in attendance.

Judge Wilson asked whether anyone had any other matters for the public comments hearing before proceeding to the business meeting.



Judge Wilson thanked anyone who had been watching the public comments hearing on YouTube.

The public comments hearing then concluded at 5:57 pm.