



## Minutes

Maryland State Commission on Criminal Sentencing Policy  
2022 Public Comments Hearing  
December 6, 2022, 5:00 p.m.

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

Honorable Brian L. DeLeonardo, Chair  
Honorable Shannon E. Avery, Vice-Chair  
Honorable J. Sandy Bartlett  
Richard A. Finci, Esq.  
Secretary Robert L. Green  
Melinda C. Grenier (appearing via Zoom)  
Robert H. Harvey, Jr., Esq. (appearing via Zoom)  
Brian D. Johnson, Ph.D.  
Honorable Michelle R. Saunders  
Alethea Miller  
Kyle E. Scherer, Esq.  
Honorable Melanie M. Shaw  
Lisa M. Spicknall-Horner  
Honorable Charles E. Sydnor, III  
Honorable Christopher R. West  
Carrie Williams, Esq. *representing Attorney General Brian E. Frosh*  
Donald E. Zaremba, Esq. *representing Public Defender Natasha Dartigue*

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

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

### **Speakers:**

None

***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 5:06 pm when Judge DeLeonardo called the meeting to order and welcomed everyone to the annual hearing. Judge DeLeonardo indicated that the meeting was being streamed live on YouTube. He then declared that a quorum was present and that the Commission could proceed with the public comments hearing as well as the business meeting that would follow.



Judge DeLeonardo noted that there were some new Commissioners present and asked that all the Commissioners introduce themselves. The Commissioners then introduced themselves and briefly described their role on the Commission.

Following the introductions, Judge DeLeonardo asked Dr. Soulé to provide an introductory presentation on the history and purpose of the Sentencing Commission.

Dr. Soulé greeted everyone and welcomed them to the MSCCSP public comments hearing. He noted that the MSCCSP holds an annual public comments hearing as an opportunity to solicit feedback from the public about the sentencing guidelines and the work of the Sentencing Commission.

Dr. Soulé began the presentation by providing background information about the Commission, including the purpose, goals, and objectives of the MSCCSP and the sentencing guidelines. Dr. Soulé noted that Maryland was one of the first states to initiate a sentencing guidelines system. The Maryland Judiciary introduced the concept of sentencing guidelines in the late 1970s in response to growing concern about unwarranted sentencing disparity and a general interest in sentencing by the public and elected officials. 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, and that is how the Maryland State Commission on Criminal Sentencing Policy was formed.

Dr. Soulé explained that the MSCCSP is an independent, objective agency comprised of a balanced board of 19 members, representing 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 review 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 guidelines worksheets.

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 accounts 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 for each of these factors. Accordingly, the guidelines 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 easiest way to explain how the guidelines work was to offer an example. He explained that the guidelines are scored on two primary 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 measuring 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 probation, 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 more 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. This two-dimensional grid allows the guidelines to account for the most common, but certainly not all, characteristics that are relevant to the sentencing decision.



Dr. Soulé stated that there are a few basic principles regarding the Maryland sentencing guidelines. First, the guidelines are voluntary. Judges may, at their discretion, depart from the guidelines. Second, 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. This is illustrated by recently adopted changes to the sentencing matrices for property and drug offenses that went into effect on July 1<sup>st</sup> of this year. Finally, CP, § 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 then concluded his presentation by discussing some of the planned activities that the Commission would be addressing. First, the Commission will create and publish a data dashboard in accordance with Senate Bill 763 (2022), which requires the Commission to add a new section to the annual report providing additional details about crimes of violence. The bill also requires the Commission to create a data dashboard to make this information easily accessible on the Commission's website. Dr. Soulé explained that the Commission staff intends to deploy the new data dashboard by January 31, 2023, to correspond with the due date for the 2022 annual report. Dr. Soulé stated that in addition to the data dashboard, the Commission is also working to create a data extraction tool on the website to make the data even more easily accessible. Dr. Soulé noted that he would speak more about both the data dashboard and the data extraction tool when he presents the executive director report during the business meeting. Dr. Soulé then addressed a third upcoming task of the Commission, which is the creation of a report on racial biases at sentencing. Dr. Soulé reminded the Commission that during the 2023 budget review process the Department of Legislative Services required the Commission to provide a report on racial biases at sentencing. Dr. Soulé stated that the staff projects completion of this report by July 15, 2023, and that they plan to further discuss this report at the May 2023 meeting. Finally, Dr. Soulé stated that Commission staff is currently working with programmers with the Department of Public Safety and Correctional Services to implement a new round of updates for the Maryland Automated Guidelines System (MAGS), including a substantial update to simplify how sentencing information is reported within MAGS, as well as other minor updates. Dr. Soulé stated that the staff has developed a revised protocol that will simplify how sentencing information is entered into MAGS. Dr. Soulé stated that Commission staff believes the updates will be well-received by court users and that Commission staff is looking forward to rolling out the updates. Dr. Soulé further stated that after testing the updates, Commission staff intends to roll out the updates within the next few months.

Dr. Soulé concluded his presentation by noting that since its inception, the Commission has made it a goal to incorporate feedback from the public and the Commission's criminal justice partners into the Commission's policy decisions. The Commission values this input and wants to ensure that the guidelines remain a relevant and useful tool for practitioners and for the public. Dr. Soulé noted that the annual public comments hearing is just one way the Commission solicits and incorporates this feedback. He stated that if anyone has any questions or comments about the guidelines or the work of the Commission, they may reach out to Commission staff via the Commission website, phone, or email.



Judge DeLeonardo then provided concluding remarks, noting that during his time as a member of the Commission and now as Commission Chair, many of the issues that the Commission addresses came from the Commission itself, but also from members of the public. Accordingly, he encouraged civilian stakeholders to reach out to the Commission with questions or concerns. Judge DeLeonardo provided a recent example where someone raised an issue about sentencing, and he informed the person that they could raise the issue at the public comments hearing or submit the concern in writing to the Commission. Judge DeLeonardo assured the person that the Commission really does address issues raised by the public. Judge DeLeonardo noted that there had been occasions in the past where issues raised by the public had resulted in extensive research and debate, and even changes to the guidelines. Considering this, Judge DeLeonardo echoed Dr. Soulé's comments about the value of public input on the sentencing guidelines, and he invited Commission members to encourage members of the public to reach out to the Commission with their concerns or questions.

Judge DeLeonardo asked if there were any other Commissioner comments, and seeing none, asked Dr. Soulé to complete one final call for speakers.

Dr. Soulé took a final call for speakers, and there were none.

The public comments hearing concluded at 5:26 pm.