



## Minutes

Maryland State Commission on Criminal Sentencing Policy  
2024 Public Comments Hearing  
Maryland Judicial Center  
Annapolis, MD 21401  
December 3, 2024

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

Honorable Dana M. Middleton, Chair  
Rodney R. Davis  
Honorable Brian L. DeLeonardo  
Richard A. Finci, Esq.  
Matthew B. Fraling, Esq., *representing Public Defender Natasha Dartigue*  
Angelina Guarino, *representing Secretary Carolyn J. Scruggs*  
Robert H. Harvey, Jr., Esq.  
Brian D. Johnson, Ph.D.  
Larry L. Johnson  
Delegate David H. Moon  
Alethea P. Miller  
Honorable Michelle R. Saunders  
Kyle E. Scherer, Esq.  
Honorable Melanie M. Shaw  
Senator Christopher R. West

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

Sarah Bowles  
Julia Caspero  
Stacy Najaka, Ph.D.  
Anabella Nosel  
Katharine Pembroke  
David Soulé, Ph.D.

### **1. Call to Order**

MSCCSP Chair, Judge Dana M. Middleton, called the meeting to order.

### **2. Declaration of Quorum**

The meeting began at 5:10 p.m. after a quorum had been established.



### **3. Introduction of commissioners and recognition of new OPD designee, Matthew Fraling**

Judge Middleton welcomed the commissioners and recognized Matthew Fraling, the new Office of the Public Defender (OPD) designee. Commissioners introduced themselves and briefly described their role on the Commission.

### **4. Presentation on background/history of the MSCCSP and recognition of the MSCCSP 25-year anniversary – Dr. David Soulé**

Dr. Soulé explained that the MSCCSP holds an annual public comment hearing as an opportunity to solicit feedback about the sentencing guidelines and the work of the Sentencing Commission. He began by providing background information about the Sentencing Commission and the history and purpose of the sentencing guidelines.

Dr. Soulé noted that Maryland was one of the first states to initiate a sentencing guidelines system, first introduced by the Judiciary. In April 1979, the Sentencing 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 15 years with oversight by the Judiciary.

In 1999, the permanent MSCCSP was created with the adoption of HB 602 from the 1999 Legislative Session. The Maryland General Assembly created the MSCCSP as an independent agency to support fair and proportional sentencing policy and to maintain the State's voluntary sentencing guidelines for criminal cases sentenced in the circuit courts. The enabling legislation that creates the current day Sentencing Commission outlines a statement of intent for the MSCCSP in Criminal Procedure Article (CP), Section 6-202 that includes six goals.

CP, § 6-202 states:

1. Sentencing should be fair and proportional and that 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 described the Commission's 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 collection and maintenance of an extensive database assembled via data submitted on the



sentencing guidelines worksheets. The Commission uses the guidelines data to monitor circuit court sentencing practice. 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 accurate completion of the sentencing guidelines worksheet.

The sentencing guidelines are a mechanism to encourage proportional sentences. The primary goal of the guidelines is to promote consistent, fair, and equitable sentencing practices whereby offenders who are convicted of similar offenses with similar criminal histories are treated alike. The Maryland sentencing guidelines were designed to systematically account for the key case characteristics, specifically the offender's prior record and the seriousness of the offense. The sentencing guidelines help achieve proportional sentencing by identifying and assigning weights to these core, objective factors. The guidelines account for the most common characteristics of an offender and their crime that are most relevant to the sentencing decision and help provide a framework to allow judges to consistently assign the same score as their colleagues around the state for each of these factors. The guidelines provide a baseline for judges, so they know how their colleagues sentence on average for a typical case.

Dr. Soulé then explained the Maryland sentencing guidelines' basic principles. The sentencing guidelines in Maryland are voluntary, primarily descriptive, and dynamic.

In recognition of the Commission's 25<sup>th</sup> anniversary, staff created a commemorative booklet highlighting significant accomplishments and recognizing the service and contributions from the many commissioners and other justice partners. The booklet includes a description of the Commission's history and purpose, a listing of past and present MSCCSP commissioners and staff, a timeline of notable events, infographics showcasing the Commission's achievements, and personal reflections submitted by current and former commissioners, as well as other notable dignitaries. The booklet will be electronically distributed to the Commission's contact list and will also be posted on the MSCCSP website and LinkedIn page.

Dr. Soulé highlighted a few of the booklet's pages that demonstrate the breadth and comprehensiveness of the Commission's work, including the number of offenses that have been classified, sentencing guidelines compliance rates, number of Maryland Automated Guidelines Systems (MAGS) deployments, and total number of guidelines trainings held over the last 25 years.

Dr. Soulé thanked the service and contributions of the past and present commissioners, as well as the Commission's other justice partners.

## **5. Testimony from registered speakers**

Brian Shefferman, a private defense attorney who worked in the public defender's office for over 30 years, spoke to the Commission about expungement law and how these laws interact with the sentencing guidelines.



Mr. Shefferman explained that one of the main factors for the sentencing guidelines is a person's criminal record, which the Maryland Sentencing Guidelines Manual (MSGM) instructs how to calculate. The prior adult criminal record does not include expunged offenses or offenses proven by the defense to be eligible for expungement. If a person had a prior conviction that was expunged, it should not show up when a record check is being done. Cases can slip through the cracks, though, and it is incumbent on the defense attorney to raise this issue to the court. Historically, if a person received a probation before judgement (PBJ) and successfully completed probation, they could get that record expunged. Statutorily, PBJ was the only way to get an expungement. In 2016, the legislature added expungements for misdemeanors and a few felonies. Now, there are around 100 different crimes in 27 different categories that can be expunged. A person also needs to not have any new convictions or pending cases for a default of five years, but depending on the crime, the judge can grant an expungement. Many defendants who have been convicted of a long list of crimes may be eligible for expungement since legislation has added crimes eligible to be expunged. Mr. Shefferman also suggested that the guidelines instructions be revised to state, "if the court finds," rather than "if proven by the defense," for an offense to be expunged.

Mr. Harvey asked what education exists for defense attorneys to make them aware that the burden is on them to initiate an expungement.

Mr. Shefferman answered that there is nothing formal, it is reliant on the bar to provide any training on expungement.

Mr. Finci thanked Mr. Shefferman for standing in at the last minute to provide this testimony and agreed with Mr. Harvey that there needs to be education provided to the bar at large.

Dr. Soulé added that the Commission staff will include a note about expungement rules in the next Sentencing Guidelines E-News. Additionally, staff will work to organize training through the Criminal Defense Attorney's Association.

In advance of the public comments hearing, a member of the public provided testimony that was distributed to the commissioners. Dr. Soulé called for any additional individuals who wished to testify, and there were none.

The public comments hearing concluded at 5:45 p.m.