



## Minutes

Maryland State Commission on Criminal Sentencing Policy  
Judiciary Education and Conference Center  
Annapolis, MD 21401  
July 15, 2014

### Commission Members in Attendance:

Honorable Diane O. Leasure, Chair  
Delegate Curtis S. Anderson  
James V. Anthenelli, Esquire  
Colonel Marcus L. Brown  
William Davis, Esquire, *representing Public Defender Paul B. DeWolfe*  
Kieran Dowdy, *representing Secretary Gregg L. Hershberger*  
Richard A. Finci, Esquire  
Megan Limarzi, Esquire, *representing Attorney General Douglas F. Gansler*  
Honorable Andrew L. Sonner  
Delegate Joseph F. Vallario, Jr.

### Staff Members in Attendance:

Marlene Akas  
Sarah Bowles  
David Soulé, Ph.D.  
Christina Stewart

### Visitors:

Claire Rossmark, Department of Legislative Services

#### 1. Call to order

Judge Leasure called the meeting to order.

#### 2. Roll call and declaration of quorum

The meeting began at 6:05 p.m. when quorum was reached.

#### 3. Approval of minutes, May 6, 2014 meeting

The minutes were approved as submitted.

#### 4. Report from the Executive Director – Dr. David Soulé

Dr. Soulé provided an update on the status of the Maryland Automated Guidelines System (MAGS). He noted MAGS was launched in the Calvert County Circuit Court on June 8, 2014. He reported that the deployment has proceeded smoothly and the next step is to work with the Administrative Office of the Courts to develop a deployment schedule for the remaining circuit courts. He stated that he met with the judges in Frederick County and Cecil County and both groups indicated they would like to have MAGS deployed in their jurisdictions as soon as possible.



## 5. Review of proposed language regarding guidelines effective date – Dr. Soulé

Dr. Soulé referenced and briefly summarized the memorandum titled, “Proposed language to the Maryland Sentencing Guidelines Manual (MSGM) and Code of Maryland Regulations (COMAR) for guidelines effective date.” Dr. Soulé noted that at the May 6, 2014 meeting, the Commission reviewed the potential impact of the *Peugh v United States* case and voted to maintain the date of sentencing as the guidelines effective date. The Commission also approved language to be added to the MSGM and COMAR that would indicate that either party may make it known to the judge, as a consideration for departure, if the sentencing guidelines have changed since the date of the offense. The staff was asked to identify appropriate locations for this language within the MSGM and COMAR and present a recommendation for the appropriate locations at the July meeting. Consequently, Dr. Soulé presented the memo which provides for new proposed language in the Preface on pg. ii, Section 5.2 on pg. 15 and in the Frequently Asked Questions chapter on pg. 61, as well as corresponding language in COMAR 14.22.01.03B.

Mr. Davis questioned the proposed language, stating he would prefer that the language reference the *Peugh* decision or that it indicate that this pertains to an *ex post facto* violation. Dr. Soulé clarified that the language presented in the memorandum had been voted on by the Commission at its May 6, 2014 meeting and the MSCCSP staff was merely proposing the locations for this language in the MSGM and COMAR. He explained that at its last meeting, the Commission had considered doing as Mr. Davis suggested, but voted against it. Mr. Davis then proposed that “different” be changed to “harsh” and “may” be changed to “shall” in the language. Judge Leasure and Judge Sonner noted that this may open up the possibility for many more cases to be appealed. Mr. Finck responded that he is concerned that practitioners might not understand what the MSCCSP is intending to do by adopting the proposed language. He added that he believes this is a constitutional issue, and the language as presented does not emphasize the gravity of that issue. Delegate Anderson referenced the minutes from the May 6, 2014 Commission meeting, noting that the minutes stated that the MSCCSP staff was asked to present at the next Commission meeting the language given by Ms. Martin along with recommendations for the location(s) of this language in the MSGM and COMAR. Judge Leasure stated that Ms. Martin should be present for this discussion, to which the Commissioners agreed. The MSCCSP consequently decided to defer action on the matter until the next Commission meeting.

## 6. Report from the Guidelines Subcommittee – Dr. David Soulé

Judge Leasure noted that Dr. Soulé would present the report of the Guidelines Subcommittee on behalf of Judge Sonner.

### A. Review and classification of new and/or revised offenses from 2014 Legislative Session

Dr. Soulé reviewed the memorandum prepared by MSCCSP staff on recommended seriousness categories for new and/or revised offenses passed during the 2014 Legislative session.

- i. HB 43 – Stalking and Harassment – Revenge Porn (CR, §3–809)  
By unanimous vote, the Commission adopted the Subcommittee’s proposed classification as a person offense and a seriousness category of VII.



- ii. HB 695 – Influencing or Intimidating Judicial Process – Tampering with or fabricating physical evidence (CR, §9-307)  
By unanimous vote, the Commission adopted the Subcommittee’s proposed classification as a person offense and a seriousness category of V.
- iii. HB 697 – Threat of mass violence – Threatening to commit or cause a crime of violence that would place others at risk (CR, §3-1001)  
By unanimous vote, the Commission adopted the Subcommittee’s proposed classification as a person offense and a seriousness category of V.
- iv. HB 714/SB 810 – Identity Fraud – Use an interactive computer service to disclose personal identifying information of an individual in order to annoy, threaten, embarrass, or harass (CR, §8-301(g)(4))  
By unanimous vote, the Commission adopted the Subcommittee’s proposed classification as a property offense and a seriousness category of VII.
- v. SB 50/HB 955 – Sexual Crimes – Use of personal identifying information of an individual to invite another to commit sexual crime (CR, §3-325)  
The Subcommittee recommended a proposed classification as a person offense with a seriousness category of III. Delegate Vallario questioned whether the offense should receive the same seriousness category as second degree rape. Mr. Finci and Claire Rossmark provided clarification on the offense recounting the rape by proxy case from Prince George’s County that sparked the bill. Mr. Davis expressed concern about placing the offense in the same category as an attempted second degree rape. Ms. Limari inquired whether the standard for assigning seriousness categories included consideration of the act itself as well as what the Legislature had laid out as the maximum penalty for the offense. Dr. Soulé commented that the Subcommittee considers comparables based on statutory maximum and misdemeanor/felony classification taking its lead from the Legislature. Judge Sonner asked whether the Guidelines Offense Table included any seriousness category IV offenses with a 20 year statutory maximum. Ms. Limarzi commented that most seriousness category IV offenses carried a 10 year statutory maximum. Mr. Finci noted that he could not find a category IV with a 20 year statutory maximum, but he did note that child abuse is classified as a category IV and carried a 15 year statutory maximum.

A motion was made to assign a seriousness category IV to *use of personal identifying information of an individual to invite another to commit sexual crime*. The Commission adopted the proposed seriousness category of IV noting one (1) vote in opposition. The offense was classified as a person offense as recommended by the Subcommittee.

- vi. SB 337/HB 306 – Abuse and Other Offensive Conduct – Commit crime of violence in the presence of a minor (CR, §3-601.1)  
The Subcommittee made no recommendation for the offense type or seriousness category for this offense. Mr. Finci commented that the Subcommittee’s discussion centered around whether the offense is most comparable to a neglect crime or direct abuse crime. Mr. Finci noted that the assignment of V or VI would have a greater



impact on the offender's criminal history than on guidelines calculation. Delegate Anderson inquired whether the offense is a misdemeanor or felony. Dr. Soulé noted that the statute did not include language denoting whether the offense is a misdemeanor or felony. He noted that the Department of Legislative Services instructed that the offense is presumed a misdemeanor in the absence of direct language in the statute. Mr. Davis commented that unlike the child neglect statute which is a category VI, the instant offense is not an intentional act committed directly against the child. Mr. Davis recommended a category VII for the instant offense. Delegate Anderson recommended a seriousness category VI for the offense based on the impact on the child and noting that like child neglect, the Commission is again tasked with assigning a category for a completely new offense. Col. Brown commented that part of the effect on the child is the fear instilled by the offender intentionally committing the act in the presence of the child.

A motion was made to classify *commit crime of violence in the presence of a minor* as a person offense. The Commission unanimously adopted the proposed classification.

A motion was made to assign a seriousness category VI to *commit crime of violence in the presence of a minor* as a person offense. The Commission unanimously adopted the proposed seriousness category of VI.

- vii. HB 807/SB 742 – Burglary and Related Crimes – Home Invasion (CR, §6-202(b))  
The Subcommittee recommended the classification of property for home invasion but made no recommendation for seriousness category. Mr. Finci noted that this is not a new offense, only the creation of a new subsection within the burglary statute for the specific offense, breaking and entering with the intent to commit a crime of violence with an increased statutory maximum. Delegate Anderson inquired as to the seriousness category for carjacking. Dr. Soulé responded noting that both are person offenses and armed carjacking is a seriousness category II while unarmed carjacking is a seriousness category III. Judge Sonner questioned whether burglary was classified as a crime of violence under the three strikes law. Dr. Soulé commented that a crime of violence as defined in CR, §14-101 does not include any burglary offense. However, violent crimes as defined in CS, §7-101 and PS, §5-101 include burglary first, second, and third degree. Delegate Anderson commented that if it can be proven that a person broke into a house with the intent to commit a crime of violence as delineated in CR, §14-101 then home invasion should be classified as a person offense.

A motion was made to classify home invasion as a person offense. The Commission unanimously adopted the proposed classification.

A motion was made to assign a seriousness category III to home invasion. The Commission unanimously adopted the proposed seriousness category of III for this offense.



- viii. SB 314/HB 402 – Fraud, Miscellaneous – Practicing naturopathic medicine without a license (HO, §14-5F-29)  
By unanimous vote, the Commission adopted the Subcommittee’s proposed classification as a person offense and a seriousness category of VI.
- ix. HB 453 – False Statements, Other – False statement to Department of Housing and Community Development, in document required under or to influence action on a Rental Housing Program loan (HS, §4-411)  
By unanimous vote, the Commission adopted the Subcommittee’s proposed classification as a property offense and a seriousness category of VII.
- x. HB 553 – False Statements, Other – False statement to Department of Housing and Community Development, in document required under or to influence action on an Energy-Efficient Homes Construction Loan Program loan (HS, §4-2005)  
By unanimous vote, the Commission adopted the Subcommittee’s proposed classification as a property offense and a seriousness category of VII.
- xi.
- a. HB 957/SB 710 – Motor Vehicle Offense – Driving while impaired by alcohol, 3<sup>rd</sup> or subsequent offense (TR, §21-902(f)(2))  
By unanimous vote, the Commission adopted the Subcommittee’s proposed classification as a person offense and a seriousness category of V.
- b. HB 957/SB 710 – Motor Vehicle Offense – Driving while impaired by alcohol, while transporting a minor, 3<sup>rd</sup> or subsequent offense (TR, §27-101(q)(2)(iii))  
By unanimous vote, the Commission adopted the Subcommittee’s proposed classification as a person offense and a seriousness category of V.
- c. HB 957/SB 710 – Motor Vehicle Offense – Driving while impaired by drugs or drugs and alcohol, 3<sup>rd</sup> or subsequent offense (TR, §27-101(f)(2))  
By unanimous vote, the Commission adopted the Subcommittee’s proposed classification as a person offense and a seriousness category of V.
- d. HB 957/SB 710 – Motor Vehicle Offense – Driving while impaired by drugs or drugs and alcohol, while transporting a minor, 3<sup>rd</sup> or subsequent offense (TR, §27-101(q)(2)(iii))  
By unanimous vote, the Commission adopted the Subcommittee’s proposed classification as a person offense and a seriousness category of V.
- xii. HB 1212/SB 348 – Motor Vehicle Offense – Use of text messaging device or handheld telephone while driving that causes an accident resulting in death or serious bodily injury (TR, §27-115)  
By unanimous vote, the Commission adopted the Subcommittee’s proposed classification as a person offense and a seriousness category of VII.



xiii. SB 206/HB 175 – Harboring, Escape, and Contraband – Possess, possess with intent to deliver, receive telecommunication device or accessory (CR, §9-417)

The Subcommittee proposed a seriousness category change from VI to V for this offense based on the statutory maximum increase from 3 years to 5 years by the Legislature. Mr. Finci commented that both he and Judge Nance opposed the recommendation as no change other than a statutory maximum increase was made to the offense.

A motion was made to retain the seriousness category VI already assigned to possess, with intent to deliver, receive telecommunication device or accessory. The Commission unanimously adopted the retention of seriousness category of VI for this offense.

xiv. SB 454/HB 701 – Prostitution and Related Crimes – Abduction-Persuade, entice, secrete, or harbor individual younger than 16 years old for the purpose of committing a sexual crime (CR, §11-305)

By unanimous vote, the Commission adopted the Subcommittee's proposed seriousness category change from III to II for this offense based on the increase in the statutory maximum from 10 years to 25 years by the Legislature.

xv. SB 108 – Lotteries – Prohibited acts related to State lottery (SG, §9-124)

By unanimous vote, the Commission adopted the Subcommittee's recommendation to add this offense to the Guidelines Offense Table and the proposed classification as a property offense and a seriousness category of VII.

xvi. SB 364 – CDS and Paraphernalia – Possession of less than 10 grams of marijuana (CR, §5-601(c)(2)(ii))

By unanimous vote, the Commission adopted the Subcommittee's recommendation to remove this offense from the Guidelines Offense Table, as the Legislature made it a civil offense.

xvii.

a. SB 659/HB 665 – Animals, Crimes Against – Unlicensed surgery on dogs, 1<sup>st</sup> offense (CR, §10-624(c)(1))

By unanimous vote, the Commission adopted the Subcommittee's recommendation of no action due to the lack of any substantive changes to the offense.

b. SB 659/HB 665 – Animals, Crimes Against – Unlicensed surgery on dogs, subsequent offense (CR, §10-624(c)(2))

By unanimous vote, the Commission adopted the Subcommittee's recommendation of no action due to the lack of any substantive changes to the offense.



- xviii.
- a. SB 660/HB 667 – Animals, Crimes Against – Unauthorized surgical devocalization of dog or cat, 1<sup>st</sup> offense (CR, §10-624(d)(1))  
By unanimous vote, the Commission adopted the Subcommittee’s recommendation of no action due to the lack of any substantive changes to the offense.
  - b. SB 660/HB 667 – Animals, Crimes Against – Unauthorized surgical devocalization of dog or cat, subsequent offense (CR, §10-624(d)(2))  
By unanimous vote, the Commission adopted the Subcommittee’s recommendation of no action due to the lack of any substantive changes to the offense.
- xix. SB 699/HB 289 – Telecommunications and Electronics, Crimes Involving – Use of captured plate data by employee of a law enforcement agency without a legitimate law enforcement purpose (PS, §3-509(b))  
By unanimous vote, the Commission adopted the Subcommittee’s recommendation of no action due to the lack of any substantive changes to the offense.
- xx. SB 694/HB 150 – Fraud, Miscellaneous – Violation of any provision of Health Occupations Article, Title 17, Subtitle 6A (Maryland Behavior Analysts Act) (HO, §17-6A-29)  
By unanimous vote, the Commission adopted the Subcommittee’s recommendation of no action due to the lack of any substantive changes to the offense.
- xxi. SB 818/HB 559 – False Statements, Other – False Statement-in application for participation in Human Trafficking Address Confidentiality Program (HO, §17-6A-29)  
By unanimous vote, the Commission adopted the Subcommittee’s recommendation of no action due to the lack of any substantive changes.
- xxii.
- a. HB 1282– Surveillance and Other Crimes Against Privacy – Disclose information regarding a drug overdose death in a public meeting of a local drug overdose fatality review team (HG, §5-905)  
By unanimous vote, the Commission adopted the Subcommittee’s recommendation of no action due to the lack of any substantive changes to the offense.
  - b. HB 1282– Surveillance and Other Crimes Against Privacy – Disclose confidential information relating to drug overdose fatalities (HG, §5-906)  
By unanimous vote, the Commission adopted the Subcommittee’s recommendation of no action due to the lack of any substantive changes to the offense.



## xxiii.

- a. HB 957/SB 710– Motor Vehicle Offense – Driving while impaired by alcohol, 2<sup>nd</sup> offense (TR, §21-902(b))  
By unanimous vote, the Commission adopted the Subcommittee’s recommendation of no action due to the lack of any substantive changes to the offense.
- b. HB 957/SB 710– Motor Vehicle Offense – Driving while impaired by alcohol, while transporting a minor, 2<sup>nd</sup> offense (TR, §21-902(b))  
By unanimous vote, the Commission adopted the Subcommittee’s recommendation of no action due to the lack of any substantive changes to the offense.
- c. HB 957/SB 710– Motor Vehicle Offense – Driving while impaired by drugs or drugs and alcohol, 2<sup>nd</sup> offense (TR, §21-902(c))  
By unanimous vote, the Commission adopted the Subcommittee’s recommendation of no action due to the lack of any substantive changes to the offense.
- d. HB 957/SB 710– Motor Vehicle Offense – Driving while impaired by drugs or drugs and alcohol, while transporting a minor, 2<sup>nd</sup> offense (TR, §21-902(c))  
By unanimous vote, the Commission adopted the Subcommittee’s recommendation of no action due to the lack of any substantive changes to the offense.

## xxiv.

- a. SB 460/HB 781– Sexual Crimes – Sex Offense, 4<sup>th</sup> Degree (CR, §3-308(d)(1))  
By unanimous vote, the Commission adopted the Subcommittee’s recommendation of no action due to the lack of any substantive changes to the offense.
- b. SB 460/HB 781– Sexual Crimes – Sex Offense, 4<sup>th</sup> Degree, *subsequent* (CR, §3-308(d)(2))  
By unanimous vote, the Commission adopted the Subcommittee’s recommendation of no action due to the lack of any substantive changes to the offense.

- xxv. SB 815/HB 638– Harboring, Escape, and Contraband – Possess, possess with intent to deliver, receive telecommunication device (CR, §9-417)  
By unanimous vote, the Commission adopted the Subcommittee’s recommendation of no action due to the lack of any substantive changes to the offense.



**B. Review proposed classification of select CL and CA offenses**

Dr. Soulé reviewed the memorandum prepared by MSCCSP staff on recommended seriousness categories of select CL and CA offenses. Dr. Soulé noted that the Guidelines Subcommittee recommended inclusion of these particular offenses in the Guidelines Offense Table as they had been identified by practitioners as not being in the Table.

i. Maryland Credit Services Businesses Act – Violation of any provision of Maryland Credit Services (CL, §14-1915)

By unanimous vote, the Commission adopted the Subcommittee’s recommendation to add this offense to the Guidelines Offense Table as a person offense with a seriousness category of VI.

ii. Securities Fraud and Related Crimes – Use a senior or retiree credential or designation in a way that is misleading in connection with the offer, sale, or purchase of securities, etc (CA, §11-705(a)(2))

The Subcommittee proposed the seriousness category of V for this offense. Delegate Anderson requested clarification on the offense. Ms. Limarzi responded that this offense is similar to the use of another’s stock broker license after he/she has retired in order to continue operating as that individual.

By unanimous vote, the Commission adopted the Subcommittee’s recommendation to add this offense to the Guidelines Offense Table as a property offense with seriousness category of V.

iii. Securities Fraud and Related Crimes – Securities Fraud and other violations of the Maryland Security Act (CA, §11-705(a)(1))

By unanimous vote, the Commission adopted the Subcommittee’s recommendation to add this offense to the Guidelines Offense Table as a property offense with a seriousness category of VII.

**C. Review of guidelines scoring for marijuana convictions of less than 10 grams**

Dr. Soulé introduced and briefly summarized the memorandum titled, “Review of guidelines scoring for marijuana convictions of less than 10 grams.” Delegate Anderson noted that prior to passage of the legislation that made the use or possession of less than 10 grams of marijuana a 90-day offense, there was no differentiation in the amount of marijuana involved. Thus, prior to when that bill became effective on October 1, 2012, there was no way of knowing whether the offense involved less than 10 grams of marijuana without consulting the statement of charges. Delegate Anderson asked Mr. Finci whether he thought it should be the responsibility of the defense attorney to make a determination as to the amount involved in prior convictions for the use or possession of marijuana. Mr. Finci replied that he believes that for now, any prior convictions for the use or possession of less than 10 grams of marijuana should not be considered in the calculation of the Prior Adult Criminal Record, although the Commission may need to revisit this at a later time if the use or possession of marijuana is completely decriminalized. Dr. Soulé noted Ms. Martin’s position that convictions for the use or possession of less than 10 grams of marijuana occurring prior to October 1, 2014 should be counted toward the Prior Adult Criminal Record. Delegate Anderson stated that in passing Senate Bill 364, the General Assembly felt that certain members of society were being overburdened with criminal records that they could not recover from. The Legislature believed that the use or possession of marijuana of less than 10 grams should not be considered a criminal offense in order to help



those individuals have a relatively clean start. Delegate Anderson stated that he agreed with Mr. Finci in arguing that only those convictions for the use or possession of less than 10 grams of marijuana should not be counted toward the Prior Adult Criminal Record.

Mr. Finci noted that as a defense attorney, he would also try to determine if the amount involved in older convictions for the use or possession of marijuana was less than 10 grams, but that this should not be required as part of the sentencing guidelines as it would be too burdensome. Mr. Davis then asked Mr. Finci what he thinks should be done in this type of situation if the defense attorney is able to provide evidence that the offense involved less than 10 grams of marijuana. Mr. Finci replied that he would ask the sentencing judge to exercise his or her discretion in this case.

Mr. Finci moved that the sentencing guidelines be amended to provide that any prior convictions for the use or possession of less than 10 grams of marijuana be excluded from the calculation of the Prior Adult Criminal Record, with MSCCSP staff to present the specific changes to the MSGM and COMAR for adoption at the next Commission meeting. Delegate Anderson seconded the motion and the motion passed, with Judge Leasure and Judge Sonner abstaining.

**7. Date, time, and location for the next Commission meeting**

The next Commission meeting was previously set for Tuesday, September 30, 2014 at the Judiciary Education and Conference Center in Annapolis, MD at 5:30 p.m. The following Commission meeting and annual Public Comments Hearing was scheduled for Tuesday, December 9, 2014 at the Miller Senate Office Building in Annapolis, MD at 4:30 p.m.

**8. Old business**

There was no old business to address.

**9. New business and announcements**

There was no new business. Delegate Anderson announced that he would like to congratulate Delegate Vallario on his reelection in the Democratic primary.

**10. Adjournment**

The meeting adjourned at 7:22 p.m.