



Minutes

Maryland State Commission on Criminal Sentencing Policy
Videoconference
January 7, 2025

Commission Members in Attendance:

Honorable Dana M. Middleton, Chair
Delegate J. Sandy Bartlett
Rodney R. Davis
Honorable Brian L. DeLeonardo
Katie Dorian, *representing Honorable Anthony G. Brown*
Richard A. Finci, Esq.
Matthew Frailing, *representing Public Defender Natasha Dartigue*
Richard E. Gibson
Angelina Guarino, *representing Secretary Carolyn J. Scruggs*
Robert H. Harvey, Jr., Esq.
Larry Johnson
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

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP or Commission) Chair, Judge Dana M. Middleton, called the meeting to order.

2. Declaration of quorum

The meeting began at 12:32 p.m. when attendance reached a quorum.



3. Review of Senate Bill (SB) 152 (2025) – Dr. David Soulé

Dr. Soulé stated that the purpose of this videoconference meeting is to discuss Senate Bill (SB) 152. If enacted, the legislation would affect the operations of the MSCCSP. As such, pursuant to the policy adopted by the MSCCSP in July 2019 with respect to responding to legislative proposals that directly affect the operations of the MSCCSP or the sentencing guidelines, the meeting was arranged for the purpose of soliciting feedback and to request a vote whether the Commission will support, oppose, or take no position on the proposed legislation, and if the Commission should submit testimony (if necessary). As the hearing for SB 152 is set for January 9, 2025, Judge Middleton, asked to schedule the meeting today so that the full Commission could discuss the bill and the possibility of submitting testimony before the 6 p.m. deadline on January 8, 2025. Dr. Soulé invited Senator West, the sponsor of this bill, to provide an overview of the proposed legislation.

Senator West explained that this bill stemmed from a conversation he had two years ago with Mr. Harvey regarding an illegal dog fighting ring in Calvert County. He said that even though there were around 20 dogs involved in the situation, because of current Maryland law, the State could only convict the offender of a single misdemeanor. Senator West explained that Mr. Harvey thought that the State should be able to convict an offender of multiple misdemeanors for each dog involved in the situation.

Senator West noted that SB 152 is identical to the amended versions of SB 17 (cross-filed with House Bill (HB) 667) introduced during the 2024 legislative session. Both SB 17 and HB 667 unanimously passed in the Senate and House, but ultimately died on *Sine Die*. Senator West said he is informed that since there was no opposition in the Senate last year, the hearing for this bill on January 9, 2025, will be sponsor-only but written testimony is allowed.

Senator West stated that SB 152 indicates that each animal harmed in violation of Section 10, Subtitle 6 of the Criminal Law Article is a separate offense and shall be deemed an individual victim for the purposes of the sentencing guidelines stacking rule (“multiple victims stacking rule” or MVSR). The reason for this bill is that in property law crimes, offenses cannot be stacked. However, for offenses involving injuries to human beings, the sentences can be stacked and therefore imposed consecutively. This bill will also enable the MVSR for offenses against animals for the purposes of this subtitle.

Dr. Soulé thanked Senator West for providing context to his bill. He stated that Chapter 10.1 of the Maryland Sentencing Guidelines Manual (MGSM) presently states:

“When there is a criminal event with multiple victims and not more than one seriousness category I or II offense, the person completing the sentencing guidelines worksheet shall add the highest of the upper limits of the guidelines ranges for each victim to find the correct overall range for the criminal event.”

Dr. Soulé explained that in the scenario in which there are multiple counts of animal offenses, each involving a unique animal and stemming from the same criminal event (with not more than one seriousness category I or II offense, which the specified animal related offenses are not) the question as to whether animals shall be treated as “victims” for the purposes of applying to the MVSR is an important one. The application of the MVSR could



considerably affect the calculation of the overall guidelines range depending on the number of unique animals involved. If the bill passes, the MSCCSP will need to amend the Maryland Sentencing Guidelines Manual (MSGM) and the Code of Maryland Regulations (COMAR) to clarify that animals *shall* be considered victims for application of the MVSR.

Dr. Soulé reiterated that in May 2023, the Commission voted to clarify that animals shall not be considered victims for the purposes of the MVSR. This decision was based on Maryland law, that defines victims as persons. At the time of the vote, the Commission suggested that the legislature could act on this matter if it wished to do so. SB 152 is being introduced in response to the Commission's decision.

Dr. Soulé presented examples of hypothetical scenarios of how the sentencing guidelines would change if SB 152 is adopted. Example 1 includes an individual with an offender score of 0 (no prior record) who is sentenced for *multiple* violations of Section 10, Subtitle 6 of the Criminal Law Article. In this hypothetical, the individual is being sentenced for two counts of aggravated animal cruelty (a felony with a 3-year statutory maximum penalty) and a third count for animal cruelty (a misdemeanor with a 90-day statutory maximum). All three counts occurred in one criminal event. Under the current sentencing guidelines instructions, the overall guidelines range is calculated by identifying the highest of the lower guidelines limits and the highest of the upper guidelines limits. In this scenario, the overall guidelines range under current rules equals probation (P) to three months (3M). If SB 152 is adopted, the MVSR would apply because there is more than one unique animal "victim". Accordingly, the overall guidelines would be calculated by adding or "stacking" the highest of the upper guidelines limit for each offense with a unique animal victim. Therefore, the upper limit of the overall guidelines range would be 6 months because the guidelines would add the upper limit of each count, 3M + 3M + P (or 0), totaling six months.

Dr. Soulé presented a second scenario where an individual with an offender score of 1 is sentenced for multiple violations of Section 10, Subtitle 6 of the Criminal Law Article. The individual is being sentenced for two counts of aggravated animal cruelty and a third count of misdemeanor animal cruelty, all of which are part of one criminal event. Under the current sentencing guidelines instructions, the overall guidelines range equals the highest of the lower guidelines limits and the highest of the upper guidelines limits. In this scenario, the overall guidelines range under the current rules equals P to 6 months (6M). If SB 152 is adopted, the MVSR would apply because there is more than one unique animal "victim." Therefore, the upper limit of the overall guidelines range would equal 15 months because the guidelines would add the upper limit of each count, 6M + 6M + 3M, totaling 15 months for the upper limit.

Dr. Soulé noted that the proposed legislation would have a minimal operational impact on the MSCCSP, as it would require the MSCCSP to consider amendments to the sentencing guidelines calculation rules to include specified animals as victims when applying the MVSR. This type of review is a normal procedure for the MSCCSP and would not have a significant fiscal or operational impact.



Dr. Soulé briefly summarized the available data relevant to the proposed legislation. He noted that a review of the Maryland Sentencing Guidelines Database indicates that, for fiscal year 2024, the MSCCSP received information for 37 sentencing events involving 64 total counts of violations of Section 10, Subtitle 6 of the Criminal Law Article, in Maryland circuit courts. The number of counts per sentencing event ranged from one to 14, and most (75.7%) of the 37 sentencing events involved a single count. Specifically, 28 individuals were sentenced for one count; four individuals were sentenced for two counts, two individuals were sentenced for three counts; two individuals were sentenced for four counts; and one individual was sentenced for 14 counts. Only 24.3% of guidelines-eligible sentencing events in FY24 involving crimes against animals included more than one crime against an animal. Accordingly, the number of sentencing events potentially impacted by the legislation is small. Finally, Dr. Soulé noted that violations of Section 10, Subtitle 6 of the Criminal Law Article are significantly more likely to be prosecuted in the District Court where the sentencing guidelines are not applied.

4. Discussion- Judge Dana M. Middleton

Judge Middleton thanked Dr. Soulé for convening the meeting and Senator West for giving an overview of the bill. She asked if there were any questions. She recalled there being discussion about this legislation previously when Delegate Elizabeth M. Embry was the sponsor. Judge Middleton acknowledged that the Commission has had some time to discuss the implications of this bill.

Judge Shaw asked if there are any other instances in the Criminal Law Article that reference the sentencing guidelines or how they apply to cases and crimes. Dr. Soulé answered that there is not another instance in the Criminal Law Article that specifically speaks to how the sentencing guidelines are applied. However, the sentencing guidelines are mentioned in the Criminal Procedure Article, which establishes the functions and mission of the Commission.

Mr. Finci asked Mr. Harvey and Senator West if there was anything in the law that prohibits a judge from imposing consecutive sentences for multiple counts. Mr. Harvey responded that there was not anything prohibiting a judge from imposing consecutive sentences. Mr. Finci explained that he understood if there was legislative intent to change common law so that animals can be treated as victims as opposed to property, which is where the discussion fell last time the Commission reviewed this bill. But, he believed that the Commission should not take a position on this bill.

Mr. Finci suggested that this bill is instructing the Commission as to how to calculate the guidelines. Dovetailing off Judge Shaw's question, Mr. Finci reiterated that no other provision or statute prescribes how the guidelines shall be calculated. Mr. Finci expressed concern that the bill sets a negative precedent because it limits the MSCCSP's discretion by requiring that animals be considered separate victims under the guidelines for purposes of the MVSR. He noted that the Commission would have to incorporate that change into the guidelines, just as the MSCCSP does with other statutory changes. Mr. Finci concluded that when it comes to the sentencing guidelines, he believes the Commission should take no position.



Dr. Soulé said that he understood Mr. Finci’s position and recalled that the Commission had a similar conversation when discussing the “animals as victims” topic in 2023. The Commission met and looked at statute and case law regarding animals and victims and concluded that there is nothing in Maryland law that suggests that animals are defined as victims. At the time, the Commission noted that the legislature could change the definition of victim, which is seemingly the intention of SB 152. Dr. Soulé thought that the legislature took a narrow approach in saying that animals are not victims under all circumstances, but just for the purpose of scoring the sentencing guidelines.

Delegate Bartlett asked in the videoconference chatroom if the Commission submitted testimony for the previous bill. Dr. Soulé replied, no, they did not submit testimony; however, that was due to the timing of the hearing. According to the Commission’s policy, commissioners can vote to take no position on legislation. Dr. Soulé explained that the Commission, in the past, has voted not to take a position on matters that the MSCCSP believes are legislative matters. He said that, related to Mr. Finci’s perspective, the question here is whether SB 152 is different from other legislation because it is narrowly applied only to the sentencing guidelines.

Mr. Harvey said that he supported the bill last year and testified on its behalf with several colleagues and animal rights groups. He said that he was glad the hearing for SB 152 was sponsor-only as he was currently snowed in and would not be able to make it to Annapolis. He acknowledged that two years ago, the Commission decided to vote that animals are not considered victims for the purpose of the MVSR, and he believes that was the correct decision based on the case law. However, he also thought that it was a narrow-minded and out-of-date position because modern science shows that animals do have feelings. During the discussion two years ago, the Commission specifically invited the legislature to do exactly what Senator West has done. Mr. Harvey believed that it is a weak position to say that the Commission invited the legislature to propose a bill but to then not support the bill. He argued that there is a need for this legislation because judges can run sentences consecutively, but to do so under the current guidelines, they would be required to come up with an explanation if the overall sentence exceeds the guidelines. He said that judges are somewhat reluctant to exceed the guidelines, except in the most egregious situations. Based on the examples provided by Dr. Soulé, the MVSR does not affect the lower end of the guidelines so the judge will have a lot of discretion. Mr. Harvey said that under the guidelines, there is little sanction for crimes involving animals. The cases he has seen in the past year or two have been a half dozen animal cruelty cases involving dog rings and multiple animals. Mr. Harvey concluded by saying that it is a strong position to take that each individual animal be treated as a separate victim.

Judge DeLeonardo said that he recalled the Commission’s previous discussion on the bill. He said that he slightly disagreed with Mr. Harvey, as he did not think the Commission asked the legislature to make this change, but it was up to the legislature if they wished to make the change. Judge DeLeonardo agreed with Mr. Finci’s statement that the Commission has always stayed out of discussions regarding whether penalties should be enhanced or modified. He believed the Commission’s position on the matter should reflect what the law is



through the lens of what the judges do. He agreed with Mr. Finci's point to not take a position on the bill. He said that the discussion about the merit of the bill is for others to decide, and last year the bill was argued well by Senator West and Mr. Harvey.

Judge DeLeonardo added to Mr. Finci's point that he is concerned that the bill will set a precedent for the legislature to specifically instruct the Commission as to how to calculate the guidelines. He asked about the possibility of a friendly amendment to remove from the bill the reference to the sentencing guidelines. If the statute passed as is, animals will be considered victims for the purpose of sentencing calculations; and the Commission would revise the guidelines to reflect the statute. Judge DeLeonardo again expressed concern that the bill would set a precedent and suggested that the legislature could accomplish the purpose of the bill without referencing the sentencing guidelines.

Senator West said that he looked at his original bill from last year and that there was relevant language pertaining to Judge DeLeonardo's point. The original bill said, that each animal harmed in violation of this subtitle is a separate offense, with no reference to the sentencing guidelines. That version of the bill passed the Senate. The House amended the bill to include the following text, "and shall be deemed an individual victim for the purposes of the sentencing guidelines stacking rule." Senator West reiterated that the bill that passed the House was not the original language and wondered if the present debate could be resolved by removing from SB 152 the phrase, "for the purposes of the sentencing guidelines stacking rule." With that amendment, the legislation would read, for the purposes of this subtitle, "each animal harmed in violation of a prohibition against animal cruelty is a separate offense and shall be deemed an individual victim." The new phrasing would remove any reference to the MVSR, alleviating the concerns raised, and not impacting the importance of the bill in allowing judges to sentence consecutively when multiple animals are involved.

Delegate Bartlett said that she appreciated the comments so far in the discussion. She asked Dr. Soulé what commissioners were being asked to do today in response to SB 152. She said that if the ask was to take a vote on whether the Commission should provide testimony, she would vote no because she agrees with the comments that were made that the Commission should not get involved in legislation or policy that changes the way business is done in the Commission. Delegate Bartlett recognized that the Commission has commented on bills in the past because there was a situation where the Commission was being told to do something outside of its traditional scope that would have resulted in a huge fiscal impact.

Delegate Bartlett explained that the amendment the House made to last year's bill was not her language but, rather, was based on a comment that she made. She explained that she did not want the bill to define animals as "individual victims" except as the definition applied to the sentencing guidelines. She said that she could discuss these concerns with Senator West later. How the sausage is made in the legislature is one way, but how the Commission does business is another, and the two should be separate.

Judge Shaw explained that she asked the question initially because she did not want to go down the slippery slope of the legislature choosing various criminal offenses and preemptively deciding how sentencing should be conducted. She appreciated Senator West's



clarification on that aspect and said that it is a difficult problem because the Commission would not normally comment or provide testimony. However, the way the bill is presently phrased, it directly impacts the Commission and the work of the Commission, which has never happened before. Judge Shaw reiterated that she appreciated Senator West looking at the language in last year's bill because she thought that the Commission's previous discussion did not mention how the Commission would treat the proposed legislation. She also appreciated Delegate Bartlett for explaining how the amendment came to be. Judge Shaw said that she is against any language in the bill that would influence the Commission's internal decision-making processes.

Judge Middleton asked if it was possible for the Commission to take no position on the bill but to comment that the bill could accomplish the same goal of establishing animals as individual victims without giving a directive to the Sentencing Commission. Mr. Finci added that it is the Commission's policy to review passed legislation and react accordingly. He offered that Dr. Soulé could describe what the Commission does when there are changes to increased penalties or things of that nature.

Mr. Harvey agreed with Judge Middleton's point. He expressed concern that if the Commission took a position against the bill, it would be a strike against the bill's goals. He thought the Commission should at least indicate that the aim of the bill can be accomplished without specific direction to the Commission as to how it should treat the issue.

Senator West said that the consensus seems to be that the Commission should not take a position on this bill, a position with which he agrees. He does not think that the Commission should direct the General Assembly with respect to substantive law. He said that he will talk with Delegate Bartlett after the videoconference and suggest amending the bill as introduced last year so that the language says, for the purpose of this subtitle, "each animal harmed in a violation of a prohibition against animal cruelty is a separate offense and shall be deemed an individual victim," removing the language, "for the purpose of the sentencing guidelines stacking rule." He said that Delegate Bartlett may have a reason as to why he should not remove that language but suggested that introducing that amendment would alleviate the Commission's concerns.

Judge Middleton responded that yes, it appears to be the consensus of those who have spoken that the Commission take no position on this bill. She asked if there was anyone else who wished to be heard. Delegate Bartlett said that she and Senator West could have a discussion later, but she wondered if the sentence could end a little earlier and read as, "each animal harmed in violation of a prohibition against animal cruelty is a separate offense." She then wondered what the impact would be on the Commission. She asked if the Commission would need to create new guidelines if the legislature didn't specifically direct the Commission to change the guidelines or as to how to change the guidelines. She said that she wanted to express her issue with defining animals as victims, as that is her biggest concern now as well as in the judiciary.

Dr. Soulé said that he completely understands Delegate Bartlett's point, however if the bill were cut shorter as she proposed, he did not believe that it would trigger the Commission to



change anything with respect to the sentencing guidelines. He explained that a separate offense does not require that the guidelines be stacked, rather unique victims require the guidelines to be stacked. The MVSR is applied for each unique victim, not for each unique offense. Therefore, if the bill was amended with that language, he thinks that it would not necessitate the Commission to alter anything with respect to the MVSR. Therefore, staff would still receive questions from practitioners. Dr. Soulé said that he preferred Senator West's proposal for how it would impact the sentencing guidelines.

Delegate Bartlett understood Dr. Soulé's point. She said her position remained the same that the Commission should not provide testimony other than for informational purposes. Regardless of what the bill states, testimony should only be for informational purposes.

Dr. Soulé agreed and felt that the Commission was going in that direction. He asked Delegate Bartlett and Senator West if they would like the Commission to submit informational testimony and what information to include, such as mentioning the Commission met and agreed to take no position on the bill.

Delegate Bartlett responded it would be helpful to provide information about the Commission's process of responding to legislation, which is what other agencies often do. She said that she is not in the position to inform her colleagues about the MSCCSP or what the Commission's purpose is. The informational testimony would help legislators understand what the task or assignment is. Dr. Soulé asked Delegate Bartlett if providing information on how the MVSR is applied and reiterating the introduction to this meeting is what she was looking for. Delegate Bartlett responded yes.

Ms. Guarino wanted to note, as one of the few agency representatives, the Department of Public Safety and Correctional Services (DPSCS) goes through this process with thousands of bill responses. Although this bill would not necessarily have any fiscal impacts, she asked if the Commission could offer insight on the impact of specific language as a component of the agency's explanation of impact in the fiscal note response. Based on the Commission's previous investigation, as part of the informational response, she recommends providing the estimated impact of how many cases this bill could affect. It is her understanding that this is the only body that has compiled that information. She noted DPSCS frequently provides this information in response to proposed changes to sentencing for specific statutes. For example, DPSCS will pull the number of charges that have been sentenced over the past few years to give a general scope of the anticipated breadth of the change that would be made. She asked if the Commission was planning to include that information as part of the testimony.

Dr. Soulé responded that he plans to include that information in the informational testimony and that the staff have already provided the fiscal and operational impact. Whenever there is legislation that has an impact on criminal law, the Department of Legislative Services (DLS) will contact the Commission and ask for a fiscal and operational impact statement. For this bill, the DLS asked the Commission to provide that impact statement as soon as possible, and the staff submitted it yesterday. As Ms. Guarino mentioned, the Commission provided the number of convictions relevant to this bill based on the data it has, but as Dr. Soulé stated in



his introduction, most of these animal offenses are prosecuted in the District Court. The Commission does not collect District Court data. The DLS analyst will use the impact statement to prepare their fiscal and policy note.

Dr. Soulé said that it sounded like the Commission is leaning towards preparing a statement for informational purposes only that describes what the MVSR is, how it works, and the other implications of this statute. However, the Commission will ultimately take no position on SB 152. He asked Senator West for clarification that when an agency signs up to testify there is the option to select “no position.” Senator West nodded his head in agreement. Dr. Soulé said that the testimony needs to be submitted by 6 p.m. the following day. The staff could quickly draft it. According to the Commission’s protocol, the staff would then ask the Guidelines Subcommittee and Judge Middleton to review the document and then have a final draft ready to submit by 6 p.m.

5. Vote whether to support, oppose, or take no position – Judge Dana M. Middleton (Action item)

Judge Middleton called for final discussion points and asked if anyone wanted to make a motion.

Mr. Harvey said he is prepared to make a motion but wanted to be sure that in the informational testimony there is some explanation of the MVSR and how this legislation would affect it. He said he agrees with the Commission taking no position and providing testimony for informational purposes only and made a motion. Judge Shaw seconded the motion. Judge Middleton called for a vote.

The Commission voted unanimously to take no position on SB 152 and submit testimony for informational purposes only to include an explanation of the MVSR and how it will affect the sentencing guidelines.

6. Old Business

There was no old business to discuss.

7. New Business and announcements

There was no new business or announcements.

Judge Middleton thanked the commissioners for their time and valuable input on such short notice. The meeting adjourned at 1:14 p.m.