



Minutes

Maryland State Commission on Criminal Sentencing Policy
Maryland Judicial Center
Annapolis, MD 21401
May 7, 2024

Commission Members in Attendance:

Honorable Dana M. Middleton, *Chair*
Matt D'Ambrosi, *representing Delegate J. Sandy Bartlett*
Rodney R. Davis
Honorable Brian L. DeLeonardo
Richard A. Finci, Esq.
Richard E. Gibson
Angelina Guarino, *representing Secretary Carolyn J. Scruggs*
Robert H. Harvey, Jr., Esq.
Brian D. Johnson, Ph.D.
Alethea P. Miller
Delegate David Moon
Honorable Michelle R. Saunders
Kyle E. Scherer, Esq.
Senator Charles E. Sydnor, III
Senator Christopher R. West
Donald Zaremba, Esq., *representing Public Defender Natasha Dartigue*

Staff Members in Attendance:

Lydia Becker
Stacy Najaka, Ph.D.
Katharine
Pembroke
David Soulé, Ph.D.

1. Call to Order/Introduction of New Commissioners and Subcommittee Assignments

Maryland State Commission on Criminal Sentencing Policy (MSCCSP) Chair, Judge Dana M. Middleton, called the meeting to order at 5:33 p.m. Judge Middleton opened the meeting with brief announcements regarding MSCCSP membership, stating that she had been appointed as MSCCSP Chair in December. Judge Middleton noted that Chief Justice Fader appointed Judge Brian DeLeonardo to continue with the Commission as the Circuit Court Representative, making this his third position on the Commission following his appointment as the State's Attorney's Representative and then as Chair of the Commission. Judge



Middleton noted that Judge DeLeonardo had been extremely helpful in her transition to Chair of the Commission and thanked him for the assistance.

Judge Middleton then welcomed Mr. Richard Gibson, the Deputy Chief of Westminster Police Department, who was appointed as the Law Enforcement Representative on the Commission by Governor Moore on December 12, 2023. Mr. Rodney Davis was appointed as the Local Correctional Facility Representative by Governor Moore on December 21, 2023. Mr. Davis is the Institutional Training Coordinator for the Baltimore Central Booking and Intake Center. Judge Middleton shared that Mr. Richard Finci was reappointed to another four-year term as the Criminal Defense Attorney Representative for the Commission on December 4, 2023, making this his sixth term and 21st year with the Commission. Commissioners offered their congratulations to Mr. Finci with a round of applause.

Judge Middleton then provided updates regarding the Guidelines Subcommittee membership. She noted that Judge Avery had completed two full terms as the Vice-Chair of the MSCCSP and the same two terms as Chair of the Guidelines Subcommittee. Judge Middleton indicated that she had asked Judge Melanie Shaw to serve as Vice-Chair of the Commission and Co-Chair of the Guidelines Subcommittee along with Judge Brian DeLeonardo, and both graciously accepted.

2. Declaration of Quorum

Following introductory announcements, Judge Middleton declared that a quorum had been established.

3. Approval of Minutes

The minutes from the December 5, 2023, public comments hearing and December 5, 2023, business meeting were approved as submitted.

4. Guidelines Subcommittee Report – Judge Brian DeLeonardo

Judge DeLeonardo mentioned that the Guidelines Subcommittee had reviewed multiple issues during its April 22, 2024, meeting. Judge DeLeonardo turned the discussion over to Commission staff to summarize each item.

a. Review of seriousness category for *misconduct in office* and follow-up regarding data collection for offenses involving an abuse of a position of trust (Action item)

Dr. Najaka directed Commissioners to the memo titled Review of Misconduct in Office, noting that Commissioners had also received comments from Sarah David from the Office of the State Prosecutor (OSP). Dr. Najaka provided a summary of the Commission's prior discussion on this topic, noting that last year, the Commission considered a request from the OSP to add a guidelines enhancement for offenses



involving the abuse of a position of trust. After hearing from the OSP and reviewing the available data, the Commission concluded that an enhancement would be contrary to the descriptive nature of the guidelines and that the Legislature is better positioned to address the OSP's concerns. However, the Commission did agree to consider a more stringent seriousness category for the specific offense of *Misconduct in office*, as well as ways to obtain more complete data for offenses involving the abuse of a position of trust. Accordingly, the Subcommittee met on April 22, 2024, to discuss these two items.

Regarding the first item, Dr. Najaka informed Commissioners that the Subcommittee was requesting that the Commission consider its recommendation, by a vote of 3-1 with 1 abstention, to revise the seriousness category for *Misconduct in office* from V to IV. This recommendation was informed by the guidelines data and comparable offenses. Dr. Najaka highlighted that the recommended guidelines range for most individuals sentenced for *Misconduct in office* starts at probation, and for more than one-fifth of individuals the range only includes probation. Consequently, when departures occur, they are nearly always above the guidelines range. Additionally, even though most ranges include probation, the average non-suspended sentence is 11 months. Dr. Najaka also reviewed several sample scenarios illustrating how the guidelines would increase if the seriousness category was changed from V to IV for *Misconduct in office*.

Regarding the second item of data collection, Dr. Najaka stated that following the last Commission meeting, the staff and the OSP corresponded about potential options for getting more complete data for offenses involving the abuse of a position of trust. Dr. Najaka explained that the OSP offered to work with the local state's attorney's offices to retroactively identify and collect information on such offenses. Therefore, no action was required from the Commission on the second item.

Dr. Najaka reiterated that the Subcommittee was requesting approval of its recommendation to change the seriousness category for *Misconduct in office* from V to IV, and she turned the discussion over to the Commission.

Judge DeLeonardo again noted that this topic was discussed in December and the Commission agreed that adding an enhancement for *Misconduct in office* would be a proactive response rather than a reflective response. Judge DeLeonardo noted that the Commission has historically had more difficulty with classifying common law offenses since they lack a specified penalty. The process of classifying common law offenses has been made easier by comparing them to already-classified offenses with a specified penalty. Because of that, one of the discussions was to consider whether *Misconduct in office* had been properly classified in relation to comparable offenses. Judge DeLeonardo stated that one of the reasons he was in favor of this seriousness category recommendation was because the average 11-month sentence for *Misconduct in office* would then be within the guidelines, whereas previously it would have been over the guidelines.



Mr. Finci stated that he had abstained from the subcommittee vote because he believed it was not the place of the Commission to consider how the guidelines impact negotiations between lawyers prior to sentencing. He noted that the Commission has always taken the position that they should not get involved in such matters. Mr. Finci was also wondering whether *Misconduct in office* should be scored more similarly to Perjury, and he had abstained because he was still weighing these considerations. He stated that he did not want to speak for Judge Shaw, but that she had hesitation about this change because of the way it was brought to the Commission. Mr. Finci asked Commissioners to keep in mind that many parties charged with this offense are police officers.

Judge DeLeonardo noted that he did not disagree with Mr. Finci but that he was trying to separate out the reason that the matter was brought to the Commission from the merits of changing the seriousness category to be more consistent with similar offenses. He stated that, even with this proposed change, the guidelines would still include probation except in situations involving firearm presence; and in these situations, there is an average of 11 months imposed anyways.

Mr. Harvey stated that, as a prosecutor, he did not believe that the way the matter was presented to the Commission was a reason to change the guidelines. Nevertheless, Mr. Harvey did not think that the current offense score reflected the fact that *Misconduct in office* almost always involves an abuse of the position of trust, which justifies an increase of one severity level. He explained that this is why he voted in favor of this change during the Subcommittee meeting.

Dr. Johnson mentioned that it seemed as though the Commission, at its December 5, 2023, meeting, had determined that this was a legislative issue. He noted that 90% of these cases are guidelines-compliant, and the Commission has only made descriptive changes to the guidelines in the past when we see a pattern of judges departing systematically. Judge DeLeonardo responded that guidelines compliance does not reflect actual sentences because MSCCSP binding plea agreements are considered compliant but could be sentenced outside the guidelines range. Therefore, he believes that the mean sentence of 11 months is reflective of where these cases are actually sentenced. Judge DeLeonardo noted that the enhancement request discussed during the December meeting was to prescribe a point across every category of crime if the offense involved a breach of trust, but the current recommendation fell within the Commission's normal routine of having to properly classify crimes.

Ms. Guarino asked how the proportion of *Misconduct in office* offenses that were resolved through pleas compared to other cases, as well as how frequently weapon presence is scored for these offenses considering that they often involve police officers. Dr. Johnson noted that 31% of *Misconduct in office* offenses were resolved through ABA/MSCCSP binding pleas, and Judge DeLeonardo added that another 28% of these



cases were resolved through an “other plea” agreement. Dr. Najaka added that 14% of misconduct offenses against a person involved the presence of a firearm.

Dr. Soulé stated that this is a unique situation because *Misconduct in office* is a common law offense, and in classifying offenses, the Commission is primarily driven by the classification of comparable offenses with similar maximum statutory penalties, which common law offenses do not have. Since the legislature hasn’t set a statutory maximum for *Misconduct in office*, opinions may differ on how to identify a comparable offense.

Delegate Moon noted that he was curious about the nature of the *Misconduct in office* cases that the OSP is attempting to get at with this modification, particularly the political cases. He stated that this may be a larger legislative project of classifying common law offenses, but since the issue is presently in front of the Commission, he supports changing the seriousness category to align with similar offenses. Senator West mentioned that legislation had been passed establishing the Task Force to Study Crime Reclassification to consider the reorganization of the entire criminal code and to determine whether common law offenses should be codified. Dr. Soulé was included as a member of the task force this past legislative session.

Mr. Zaremba added that part of his struggle with this classification is that, under the umbrella of *Misconduct in office*, there are several different types of offenses. For example, *Misconduct in office* from a police officer who improperly discharges a firearm seems completely different than *Misconduct in office* that is committed by a politician. He stated that it is hard to see how a “one size fits all” solution applies to this offense. Judge Middleton referred Commissioners to the letter from the OSP which emphasized that *Misconduct in office* offenses against a specific individual, or group of individuals, as opposed to misconduct against a particular office, has dramatically increased in recent years. This increase in cases led to their office’s hiring of a prosecutor specializing in cases of sexual assault and official misconduct overlap.

Mr. Harvey described the case of a police officer who responded to a domestic violence complaint, escorted the female victim to a hotel, and engaged in sexual relations with her that were not unconsented to, but still qualified as the crime of *Misconduct in office*. Mr. Harvey did not believe that the guidelines range of probation in that case reflected its seriousness. Judge DeLeonardo noted that, with the proposed changes, probation would still be within the guidelines but that the increased severity level would allow the new guidelines range to better reflect the average sentence length of 11 months. He did not believe that the reason for why the change was requested had as much weight as the data for current sentencing practices for these offenses.

Judge Middleton asked Commissioners if there were any other comments or questions. Hearing none, Judge Middleton then asked if anyone would like to make a motion to amend the seriousness category for the offense of *Misconduct in office* from a category



V to a category IV offense. Mr. Harvey responded by making the motion, and Judge DeLeonardo seconded. The Commission voted unanimously to accept the proposed change.

b. Proposed clarification for cases involving mandatory consecutive sentence offenses and their interaction with other guidelines rules (Action item)

Dr. Soulé stated that the second item on the Guidelines Subcommittee report relates to a proposed clarification involving mandatory consecutive sentences and their interaction with other guidelines rules. He forwarded the discussion to Ms. Pembroke to introduce this item.

Ms. Pembroke noted that the Guidelines Subcommittee was not asking the Commission to revise any of the current rules for calculating the guidelines. Rather, it was recommending that the full Commission approve the instructions clarifying how these rules interact, with the goal of avoiding excessively stacking the guidelines in cases where multiple rules apply. Therefore, the Subcommittee recommended two clarifications to the Maryland Sentencing Guidelines Manual (MSGM) and the Code of Maryland Regulations (COMAR).

First, that the mandatory consecutive sentence rule does not apply when there are two or more seriousness category I or II offenses. This is the rule already in place when the multiple victims stacking rule applies. Second, when both the mandatory consecutive sentence rule and the multiple victims stacking rule apply, the user applies the rule that results in the greatest upper guidelines limit.

Ms. Pembroke walked through an example of how these clarifications would function, emphasizing that these calculations would all be done automatically by the Maryland Automated Guidelines System (MAGS). Examples were also provided to Commissioners in the corresponding memo. Ms. Pembroke then turned the discussion over to the Commission.

Dr. Soulé emphasized that these recommendations would not change any guidelines rules, but rather identify how existing rules interact. This issue came to the staff's attention when the staff was instructing MAGS programmers how to correctly code MAGS to account for these calculations. Dr. Soulé reiterated that MAGS would do these calculations and it would not be incumbent on the users to figure them out. When the Commission adopted the latest rule on mandatory consecutive sentences, it did not account for the rare circumstance where multiple guidelines-stacking rules could apply. Therefore, the Subcommittee is simply asking the Commission to approve certain clarification which states that these rules cannot all be applied at the same time, resulting in excessive stacking.



Judge DeLeonardo noted that the Subcommittee had unanimously voted to accept these clarifications. Judge Middleton asked if there were any further questions. Delegate Moon made a motion to accept the recommendations, and Mr. Finci seconded. The clarifications were passed unanimously by the Commission.

5. Executive Director Report – Dr. David Soulé

Dr. Soulé stated that he had eight items to discuss as part of the Executive Director Report.

a. Judicial Conference survey on sentencing guidelines departure reasons (Status report)

Dr. Soulé informed Commissioners that, on April 19, 2024, he and the staff policy analyst Lydia Becker attended the annual judiciary conference and presented a survey to circuit court judges regarding the current list of common guidelines departure reasons. Dr. Soulé noted that Judge Middleton was the co-host of this conference and did an amazing job organizing the event. The purpose of the survey is to promote the MSCCSP's ongoing review of the listed common departure reasons, which was last updated in 2001. The survey received 117 responses, which MSCCSP staff will review and present to the Guidelines Subcommittee during their next meeting. Dr. Soulé stated that the Subcommittee will review the survey responses and recommend changes to the list of common departure reasons for the full Commission to approve during its July 9, 2024, meeting.

b. February 1, 2024, sentencing guidelines revisions (Status report)

Dr. Soulé stated that, on February 1, 2024, the MSCCSP issued an updated version of the MSGM that included updates adopted by this Commission in 2023. These updates include the following:

- Newly adopted instructions relating to the guidelines scoring for offenses with mandatory consecutive sentences;
- Modified instructions for scoring weapon presence points for part C of the offense score when the offense involves the presence of a feigned weapon;
- Clarifying instructions relating to the guidelines scoring for sentences to probation before judgment (PBJ) pursuant to Criminal Procedure Article (CP), § 6-220(c); and
- Finally, guided by Maryland case law, clarifying instructions that animals are not considered victims in the multiple victims stacking rule.

c. Sentencing guidelines training and judiciary feedback sessions (Status report)

Dr. Soulé informed Commissioners that, on January 24, 2024, he provided a presentation regarding the goals and objectives of the sentencing guidelines for a Judicial College sentencing seminar. The seminar was attended by 39 judges from



around the state. Additionally, on April 4, 2024, Dr. Soulé participated in a judicial seminar regarding structural inequality. As one portion of a larger judicial seminar on anti-racism, he provided a summary of the MSCCSP July 2023 report assessing racial differences in sentences among those sentenced under the criminal sentencing guidelines.

d. MAGS 12.0 planned deployment (Status report)

Dr. Soulé stated that over the past year, MSCCSP staff has been actively collaborating with DPSCS programmers to update MAGS in response to feedback from criminal justice partners. Dr. Soulé noted that these forthcoming updates will enhance the overall function and usability of the application. The updates include a more mobile-friendly format and new features such as simplifying the sentence screen to make it easier for court staff to data-enter sentence information, adding a feature to re-create previously submitted worksheets for subsequent sentence modifications, adding a feature to easily identify generally suspended sentences, and reflecting the count number and worksheet ID on the worksheet PDF. Dr. Soulé informed Commissioners that MSCCSP staff anticipates deploying an updated version of MAGS on or about July 1, 2024, and that MAGS-related training will be scheduled around the time of deployment to highlight these updates to criminal justice partners.

e. MSCCSP/sentencing guidelines related legislation from 2024 Session (Status report)

Dr. Soulé then provided an update regarding three bills from the 2024 session that are relevant to the work of the MSCCSP.

i. HB 315/SB 319, Firearms Reporting Requirements

First, Dr. Soulé stated that House Bill 315 (cross-filed with Senate Bill 319) was passed during the 2024 Legislative Session and requires the Maryland Judiciary to report on the number of charges, convictions, and sentences for certain regulated firearm violations. This legislation repeals Section 6-215 of the Criminal Procedure Article that required the MSCCSP to complete this report on certain regulated firearm violations. This requirement was established during the 2023 Legislative Session, and the MSCCSP submitted a fiscal and operation impact statement to the legislature explaining that Staff did not have adequate resources to complete the report at that time, largely because the MSCCSP does not collect charging information.

Dr. Soulé noted that Senator West and Delegate Bartlett graciously offered to submit legislation during the 2024 session to transfer this report requirement to a more appropriate agency. House Bill 315 shifts these reporting requirements to the Maryland Judiciary. Since this legislation passed, the MSCCSP is not responsible for



these reporting requirements. Dr. Soulé thanked Senator West and Delegate Bartlett for introducing this legislation, supporting it, and guiding it through the adoption process.

ii. SB 17/HB 667, Crimes Relating to Animals

Dr. Soulé stated that, in addition to the previously mentioned legislation, Senator West also introduced Senate Bill 17 (cross-filed with House Bill 667) during the 2024 Legislative Session. As amended, this bill provided that an animal shall be considered an individual victim for the purposes of the sentencing guidelines multiple victims “stacking” rule (MVSr), as outlined in the Maryland Sentencing Guidelines Manual, Chapter 10.1.

Dr. Soulé noted that Senator West introduced this bill in response to the Commission’s February 1, 2024, revisions to the MSGM and COMAR, which clarified that animals shall not be considered victims for the purpose of the MVSr. The Commission adopted these revisions at its May 9, 2023, business meeting. The Commission approved these revisions largely because Maryland law generally defines a victim as a person and not an animal. At the time of the vote, the Commission noted that the legislature could act on this matter if it wished to do so. Senate Bill 17 would have required the Commission to revise the MSGM and COMAR to clarify that animals shall be considered victims for the MVSr. However, neither Senate Bill 17 nor the cross-file, House Bill 667, passed during the 2024 legislative session. Therefore, Dr. Soulé stated that no action was required from the Commission regarding this legislation. Senator West suggested that this matter may be brought up again next year.

iii. SB 379, Task Force to Study Crime Reclassification and Penalties

The third bill that Dr. Soulé discussed was Senate Bill 379. This bill was also introduced by Senator West. A copy of this bill was provided to Commissioners for the meeting. This legislation relates to the Task Force to Study Crime Classification, which was established through Senate Bill 209 during the 2023 Legislative Session. Senate Bill 379 renames the “Task Force to Study Crime Classification” as the “Task Force to Study Crime Reclassification and Penalties.” Senate Bill 379 requires the Task Force to study the penalties for criminal and civil offenses under State law, the potential need for reclassification of certain crimes including whether common laws offenses should be codified, the alteration of penalties, and whether certain changes should be made to crimes lacking an explicit mens rea.

Dr. Soulé noted that Senate Bill 379 also expands the membership of the Task Force to include himself as Executive Director of the Maryland Sentencing Commission, or the Executive Director’s Designee. Additionally, the legislation also expands



membership to the Executive Directors of the Governor’s Office of Crime Prevention and Policy (GOCCP), the Maryland Coalition Against Sexual Assault, and the Maryland Crime Victim’s Resource Center, Inc. The first meeting of the task force is set to occur on or after June 1, 2024, and the Task Force shall report its findings to the Governor on or before December 31, 2025. As an appointed member of this Task Force, Dr. Soulé will partake in its meetings and report relevant updates to the Commission.

f. MSCCSP website sentencing guidelines data download feature (Status report)

Dr. Soulé stated that on March 1, 2024, the MSCCSP launched a data download tool on the MSCCSP website, providing even easier access to the available sentencing guidelines data. Prior to the launch of the tool, data requests were submitted using an online request form on the MSCCSP website. Upon receipt of each request, the research director would follow up with the requester, confirming that the request was received and obtaining any needed clarification on the specifics of the request. Once the requested data file had been generated, it was emailed to the requester along with the data codebook and a brief memo describing the provided files.

Dr. Soulé informed Commissioners that the data download tool streamlines this process by allowing requesters to download the sentencing guidelines data and corresponding documentation, such as the data codebook and a description of the source and scope of the data, directly from the MSCCSP website. He noted that, since the tool launched two months ago, there have been nine documented data downloads, primarily by academic researchers and attorneys.

g. Update on MSCCSP staff research assistant vacancy (Status report)

Next, Dr. Soulé provided an update on the status of the staff’s research assistant vacancy. He stated that they had received 49 applications for the position. The prior week, the staff interviewed eight candidates and narrowed down the list to four finalists. He added that staff are working to speak with their references and hope to decide on a finalist within the next two weeks. If all goes well, staff hope to be able to introduce the new research assistant at the July meeting.

h. University of Maryland Behavioral and Social Sciences Research Showcase (Status report)

The final item Dr. Soulé presented was the staff’s participation in the University of Maryland’s College of Behavioral and Social Sciences (BSOS) Research Showcase event on May 2, 2024. He stated that this year, the showcase featured research focusing on inequalities. Dr. Soulé informed Commissioners that staff prepared a poster to highlight the work of the MSCCSP in general and to summarize the 2023



race report. He noted that the showcase was a great opportunity to share the Commission's work with attendees from across and outside the campus.

Mr. Harvey congratulated staff on their participation in the BSOS research event, stating that it seemed to be a great opportunity to share the Commission's work.

6. Remaining 2024 MSCCSP Meetings (Status report)

The remaining MSCCSP meetings were noted in the agenda:

- Tuesday, July 9, 2024 (virtual)
- Tuesday, September 10, 2024 (virtual)
- Tuesday, December 3, 2024 (in-person, Maryland Judicial Center).

7. Old Business/New Business/Announcements

Judge Middleton asked Commissioners if there was any old business to discuss. Mr. Finci thanked Dr. Najaka for providing him with data for a case, as well as providing him with information on how to use Excel to filter and explore the data. Mr. Finci said that the Commission's data are much better than what he has been able to get from other agencies in the past. Next, Mr. Finci stated that the Guidelines Subcommittee has always worked to have consensus with what they bring back to the Commission. He wished to make it clear to the Commission that there were now five voting members of the Subcommittee instead of four. Dr. Soulé noted that the Subcommittee has had five members in the past and that membership is at the discretion of the Chair. He believes that the Subcommittee does represent a good cross-section of the Commission with a prosecutor, defense attorney, member of the legislature, and judges.

Next, Dr. Soulé informed Commissioners that 2024 marks the 25th year anniversary of the Commission, which was created on July 1, 1999, with the adoption of House Bill 602 during the 1999 Legislative Session. The Maryland General Assembly created the Sentencing Commission as an independent agency to support fair and proportional sentencing policy and to maintain the state's voluntary sentencing guidelines. Recognizing this milestone anniversary, Dr. Soulé thanked the Commissioners for the positive lasting difference that their service continues to make towards developing and maintaining fair and proportional sentencing policy in Maryland.

Judge Middleton thanked Dr. Soulé and stated that, though this is her first meeting as Chair, she has had the chance to meet with several of the Commissioners and wanted to thank them for helping this to be a smooth transition.

The meeting was adjourned at 6:31 p.m.