



Minutes

Maryland State Commission on Criminal Sentencing Policy
Maryland Judicial Center
Annapolis, MD 21401
May 9, 2023

Commission Members in Attendance:

Honorable Brian L. DeLeonardo, Chair
Honorable Shannon E. Avery, Vice-Chair
Honorable J. Sandy Bartlett
Katie Dorian, Esq., *representing Attorney General Anthony G. Brown*
Richard A. Finci, Esq.
Melinda C. Grenier
Angelina Guarino, *representing Secretary Carolyn J. Scruggs*
Robert H. Harvey, Jr., Esq.
Brian D. Johnson, Ph.D.
Alethea P. Miller
Honorable David Moon
Honorable Michelle R. Saunders
Kyle E. Scherer, Esq.
Honorable Melanie M. Shaw
Lisa M. Spicknall-Horner
Honorable Christopher R. West
Donald Zaremba, Esq., *representing Public Defender Natasha Dartigue*

Staff Members in Attendance:

Sarah Bowles
Mark Mills
Stacy Najaka, Ph.D.
Katharine Pembroke
Kathy Sanchez
David Soulé, Ph.D.

Visitors: None

1. Call to order

MSCCSP Chair, Judge Brian L. DeLeonardo, called the meeting to order.

2. Declaration of quorum

The meeting began at 5:32 p.m. after a quorum had been established.



3. Approval of minutes

The minutes from the December 6, 2022, MSCCSP public comments hearing and business meeting were approved as submitted.

4. Guidelines Subcommittee Report – Judge Shannon Avery

Judge Avery stated that the Guidelines Subcommittee met on April 25, 2023, and reviewed three items. Judge Avery turned the discussion over to Commission staff to summarize each of the three items.

a. Proposed guidelines revisions for cases involving mandatory consecutive sentences **(Action Item)**

Mark Mills from the Commission staff presented the first issue of the Guidelines Subcommittee report.

Mr. Mills referred Commissioners to the memorandum labeled “Proposed Guidelines Revisions for Cases Involving Mandatory Consecutive Sentences.” He explained that on November 16, 2022, the Guidelines Subcommittee met to review the issue presented in the memorandum along with other agenda items. However, two of the four members of the Subcommittee were unable to participate in that meeting. As a result, although the subject of the memorandum was discussed at the meeting, the Subcommittee did not take a vote at that time. Instead, it was decided that it would be helpful to solicit feedback from the full Commission prior to the Subcommittee’s vote to recommend action on this topic. Accordingly, the issue and the corresponding memorandum were placed on the agenda for the December 6, 2022, business meeting, where the Commission members discussed the topic. The Guidelines Subcommittee addressed the topic again at its April 25, 2023, meeting, and voted to take action. The current meeting memorandum presents the recommendations of the Subcommittee.

Mr. Mills provided a brief background of the issue, noting that over the years, including most recently on July 12, 2022, Commission staff has received inquiries from practitioners about why the guidelines do not stack in situations where one sentence is statutorily required to run consecutive to another sentence. In response to these inquiries, Commission staff has identified ten offenses that require judges to run a sentence consecutive to another offense for which the offender is being sentenced (listed in Appendix 1 of the memorandum). As this issue is raised periodically by practitioners, Commission staff believe that the issue is worth considering by the Subcommittee.

Mr. Mills explained that in other sentencing scenarios involving multiple convictions, the MSCCSP guidelines employ a “stacking” rule. For example, a stacking rule applies in a single sentencing event involving two or more seriousness category I or II offenses, and when there is a criminal event with multiple victims and not more than one seriousness



category I or II offense (aka the multiple victims “stacking” rule). Arguably, a stacking rule should also apply in scenarios where a statute requires an offense to run consecutive to another offense in the criminal event, to reflect the intent of the legislature that the sentences run consecutively.

The sentencing guidelines data, as noted in the memorandum, reflect that, overall, “above” departures are more common in sentencing events involving offenses with mandatory consecutive sentences when compared with all sentencing events, and that the median value for the guidelines applicable sentence as a percentage of the guidelines’ midpoint is higher in sentencing events involving offenses with mandatory consecutive sentences.

Mr. Mills stated that from a policy standpoint, applying the stacking rule to mandatory consecutive sentences makes sense. As a practical matter, however, doing so is complicated by the fact that some statutes requiring mandatory consecutive sentences employ different language than others. Some offenses involve some type of enhancement and provide that the penalty/sentence imposed should be consecutive to the sentence for the offense that forms the basis for the enhanced crime. In contrast, the sentencing provisions for other crimes provide a more general and ambiguous statement regarding the mandatory consecutive nature of the sentence, stating that the sentence shall be consecutive to “any other sentence imposed,” or to “any other sentence imposed under any other provision of law.” It is unclear whether such language would apply only to sentences within the same criminal event. Mr. Mills explained that in the interest of creating consistency, uniformity, and clarity in the application of the rule, the proposed stacking rule would apply only to sentences within the same criminal event.

Mr. Mills further noted that the question also arises whether both the lower and upper limits of the guidelines recommendations should stack, or whether just the upper limits should stack. During the April 25, 2023, Guidelines Subcommittee meeting, the Subcommittee voted unanimously to adopt a recommendation that would stack the upper limits of the guidelines recommendations in sentencing events involving a mandatory consecutive sentence. The proposed revisions to the Maryland Sentencing Guidelines Manual (MSGM) and Code of Maryland Regulations (COMAR) based on the Subcommittee’s recommendations are provided on pages 8-10 of the memorandum.

Having concluded his summary, Mr. Mills turned the topic over to the Commission for further discussion.

Judge Avery noted that the issue highlights the function of the Commission. The Commission considers policy questions as they relate to the application of the guidelines while also reflecting judicial sentences. In doing so, the Commission strives to create guidelines that are descriptive more so than prescriptive.



Senator West asked if there are any appellate decisions that provide guidance on the issue.

Judge Avery replied that there are many appellate decisions that pertain to what kinds of sentences may run consecutive or concurrent, the application of mandatory consecutive sentences, and issues of a similar nature; but there are no appellate decisions that directly relate to the sentencing guidelines policy.

Judge Shaw agreed with Judge Avery and added that the appellate decisions relate more to whether a sentence is legal with respect to merging offenses, rather than the discretion of the judge to mete out a sentence that is appropriate under the circumstances.

Judge DeLeonardo stated that if a sentence is intended to be consecutive, then the upper guidelines limit should be reflective of that. He expressed that the Subcommittee's recommendation was appropriate, and asked Mr. Finci if he wished to provide a bit of context to the Subcommittee's conversation.

Mr. Finci commented that the last time the Commission categorized a new offense with a consecutive sentence provision, it was CR, § 5-608.1--*Knowingly violated CR, § 5-602 with a mixture of heroin and fentanyl or any analogue of fentanyl; or fentanyl or any analogue of fentanyl*. When the offense was categorized by the Commission, it was assigned a higher seriousness category (IIIC) than narcotics distribution (IIIB) for the reason Judge DeLeonardo just stated. Mr. Finci stated that at its April meeting, the Subcommittee discussed reviewing and potentially recategorizing the seriousness category for CR, § 5-608.1 considering the new framework provided by the Subcommittee's recommendation. He added that the framework will be helpful for future discussions involving offenses with consecutive sentence provisions.

Judge DeLeonardo agreed that the Commission should reevaluate the seriousness category for CR, § 5-608.1.

Ms. Guarino complimented the thoroughness and quality of the information presented in the memo. She observed that in sentencing events involving crimes against persons, judges appeared to be responsive to the legislative intent of stacked sentences. She asked if the Commission anticipated that the proposed change could potentially result in more sentences within the guidelines.

Judge Avery responded affirmatively, noting that the idea is that the policy decisions the Commission makes will not substantively alter the sentences that are handed out, since the Commission's role is to provide guideposts to judges in terms of how their colleagues are sentencing.

Ms. Guarino asked whether these policy decisions are ever reevaluated years later to determine their impact on sentences.



Dr. Soule responded that yes, the Commission frequently reevaluates decisions once sufficient data have been collected to permit an analysis of their impact on sentences. He indicated that this is something the Commission will be doing in the future with respect to the recent July 1, 2022, revisions to the guidelines for drug and property offenses.

Judge DeLeonardo added that the Commission routinely looks at the percentage of sentences that are guidelines compliant, and when the data show that the guidelines are not reflective of a certain percentage of sentences, the Commission considers whether changes should be made.

Judge DeLeonardo asked if there were any additional comments or questions. Hearing none, he requested a motion to accept the Subcommittee's recommendation.

A motion was made and seconded to accept the recommendation of the Guidelines Subcommittee. **The Commission voted unanimously to adopt the Subcommittee's recommendation to stack the upper limits of the guidelines for offenses involving a mandatory consecutive sentence.**

b. Proposed guidelines clarification regarding crimes against animals and the scoring of the multiple victims stacking rule (Action Item)

Katharine Pembroke from the Commission staff presented the second issue of the Guidelines Subcommittee report.

Ms. Pembroke referred Commissioners to the memorandum labeled "Proposed Guidelines Clarification Regarding Crimes Against Animals and the Scoring of the Multiple Victim "Stacking" Rule." She explained that on November 16, 2022, the Guidelines Subcommittee met to review this issue along with two additional agenda items. However, two of the four members of the Subcommittee were unable to participate in the meeting. As a result, although the subject of this memorandum was discussed at the meeting, no vote was taken, and it was decided that, given the complexity of the issue raised in the memorandum, it would be helpful to solicit feedback from the full Commission prior to the Subcommittee's vote to recommend action on this topic. Accordingly, this issue and the corresponding memorandum were placed on the agenda for the December 6, 2022, business meeting, at which time Commission members shared their thoughts about the topic. The topic was again discussed by the Guidelines Subcommittee at its April 25, 2023, meeting. At that time, the Subcommittee voted to take action. The current meeting memorandum presents the recommendations of the Subcommittee.

Ms. Pembroke provided a brief background of the issue, noting that the MSCCSP staff has received multiple questions involving animal cruelty cases, specifically whether an animal meets the criteria for a "victim" for the purposes of applying the multiple victims "stacking" rule (MVSR) in a criminal event with multiple counts of animal cruelty, each involving a different animal. Presently, Chapter 10.1 of the MSGM provides instructions for the MVSR and 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 should add the highest of the upper limits of the guidelines ranges for each victim to find the correct overall range for the criminal event.”

In a scenario in which there are multiple counts of animal cruelty, each involving a unique animal and stemming from the same criminal event (with not more than one seriousness category I or II offense), 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 rule could affect the calculation of the overall guidelines range considerably, depending on the number of unique animals involved.

Ms. Pembroke explained that Maryland law contains slightly varying definitions of the term “victim”, depending on the context and nature of the applicable statute. Most definitions found in Maryland law, however, specifically cite references to a “person” or “individual” and do not outwardly encompass animals. During the December business meeting and subsequent April 25, 2023, Guidelines Subcommittee meeting, multiple Commissioners agreed that there is a clear expression of legislative intent, in that “victim” is defined multiple times in the law as being a “person” or “individual.” During the December meeting, Mr. Zaremba also pointed out that the term “animal,” as defined in CR, § 10-601(b), refers to a “living creature, except a human being.” Furthermore, Commissioner Brian Johnson commented that these types of animal related offenses are already categorized as property offenses. As such, it suggests implicitly that animals are not intended to be victims. Ms. Pembroke pointed out that the memo highlights relevant case law stemming from other states, which draw mixed conclusions regarding the inclusion of animals in statutory references to victims. Pages 5 through 7 of the memo also contain various analyses of the Maryland sentencing guidelines data for sentencings involving crimes against animals.

Ms. Pembroke stated that during the April 25, 2023, meeting, by a majority vote of 3 to 1, the Subcommittee agreed to recommend to the Commission revisions to the MSGM and COMAR that clarify the instructions for the MVSR to explicitly exclude animals. Opposition to this vote expressed the opinion that animals should be considered victims, and as such, should be included in the instructions for the MVSR. Proposed revisions to the MSGM and COMAR, based on the majority recommendation to exclude animals from the MVSR are provided on page 8 of the memo.

Having concluded her summary, Ms. Pembroke turned the topic over to the Commission for further discussion.

Judge Avery initiated the discussion, noting that Maryland law does not view animals as victims; victims under Maryland law are humans. If the legislature wanted to change that they could, but the Commission’s guidance on the stacking rule should be consistent with Maryland law.

Judge DeLeonardo added that the court can treat multiple animal offenses as an aggravating circumstance and a reason to go above the guidelines.



Recognizing that Mr. Harvey was the one Subcommittee member who voted in opposition to the recommendation, Judge DeLeonardo asked Mr. Harvey if he wished to offer his position.

Mr. Harvey acknowledged that he opposes the proposed recommendation to explicitly exclude animals as victims of crime, as he believes the Commission should do the exact opposite and include animals as victims. He noted that currently in the MSGM the term “victim” is not defined. However, “victim injury” is defined. The MSGM states victim injury is “physical or psychological injury to the crime victim.” Mr. Harvey explained that he believes all will agree that animals suffer physical and psychological injury because of maltreatment. As such, the stacking rule should include animals as victims in cases involving multiple animals.

Further, the Animal Cruelty Statute, CR, § 10-602, sets forth the legislature’s intent, stating “It is the intent of the General Assembly that each animal in the State be protected from intentional cruelty...” Mr. Harvey emphasized that the statute specifies each animal. Mr. Harvey further indicated that to protect each animal, you must stack the sentencing guidelines. If you do not stack, then it makes no difference if you mistreated one animal or twenty animals. The guidelines will be the same and you will not be reflecting how the legislature intends animals to be viewed in the State of Maryland.

Mr. Harvey noted that the statistics in the meeting memo show that in cases involving multiple animal offenses, courts are more likely to go above the guidelines. As such, the guidelines should be adjusted to reflect the higher sentences associated with multiple animal offenses. He explained that the guidelines for animal cruelty are very low (often probation to 3 months). Thus, his recommendation is to either leave the guidelines as they are and let the courts figure it out on their own or designate animals as victims.

Judge Saunders asked if there has been research done regarding how animal offenses are sentenced around the State and whether sentences are within the guidelines or above.

Dr. Soulé responded that Table 3 of the meeting memo provides guidelines compliance rates for sentencing events involving crimes against animals over a 5-year period (2017-2021). The table shows that there were 77 sentencing events involving a single count; 88.0% of those sentences were within guidelines, 4% were below guidelines, and 8% were above guidelines. In comparison, there were 33 sentencing events involving multiple counts of crimes against animals; 69.7% of those sentences were within guidelines, 6.1% were below guidelines, and 24.2% were above guidelines. Dr. Soulé summarized that the data indicate that judges are more likely to sentence above the guidelines in cases involving multiple counts. He noted also that the data show that practitioners are not applying the stacking rule in cases involving multiple counts, nor are judges citing multiple counts against animals as an “other reason” for sentencing above the guidelines.

Judge Avery pointed out that an individual can be charged with multiple counts of animal cruelty when there is an operation going on, and someone with a massive dog fighting



operation could be charged per unit of prosecution. Further, the Commission providing guidance on how to calculate the guidelines with respect to the stacking rule does not curtail the discretion of the prosecutor and how they charge the case or curtail the discretion of the judge in recognizing aggravating circumstances and sentencing above the guidelines.

Ms. Guarino asked if currently there is any language that clarifies to judges that multiple animals involved in one event is a sufficient aggravating reason for departure from the guidelines.

Dr. Soulé responded that judges are provided with a list of common reasons for departure for their convenience in reporting. Judges are free to provide (i.e., write in) any other reason for departure. The guidelines do not limit the reasons for departure.

Mr. Finci suggested that multiple animal offenses be added to the list of aggravating departure reasons. From his perspective, judges do look at the list of common departure reasons when deciding how to sentence a case, and they are not necessarily looking at the list for ease of reference.

Mr. Scherer asked Mr. Harvey if his position is shared by other state's attorneys.

Mr. Harvey replied that he had not discussed the issue with them and would not want to speculate on their position.

Judge Shaw suggested that the Commission accept the recommendation of the Subcommittee with respect to animals not being considered victims because that is clearly what the case law and statutes say. She also suggested that the Subcommittee consider adding as an aggravating reason multiple animal offenses.

A motion was made and seconded to accept the recommendation of the Guidelines Subcommittee. **The motion to adopt the Subcommittee's recommendation to clarify the instructions for the stacking rule to explicitly exclude animals passed with one vote in opposition.**

Judge DeLeonardo stated that the question of adding multiple animal offenses as an aggravating reason would be sent back to the Subcommittee to address in a future meeting.

Dr. Soulé suggested that the Subcommittee consider a larger discussion of departure reasons and whether the guidelines should explicitly list aggravating and mitigating reasons for departure and not just the common reasons for departure, as that would represent a change in protocol.

Judge DeLeonardo noted that multiple animal offenses could be recognized as just another potential aggravating circumstance. Judge Avery followed up that it could be an "e.g.," and Judge DeLeonardo agreed.

Senator West stated that the solution as he sees it is for the prosecutor to hand out an indictment with counts for each animal which would allow for multiple sentences.



Mr. Harvey responded that prosecutors do just that, but the issue is that multiple counts in one criminal event do not increase the guidelines because the guidelines do not stack when animals are involved. They only stack when humans are involved.

Senator West questioned would it not be possible for the General Assembly to pass a law stating that in animal cruelty cases penalties can be stacked.

Judge DeLeonardo responded that the Commission is not in the position to create law but that it would certainly update the guidelines to reflect any changes by the legislature.

c. **Proposed seriousness category revisions for subsequent drug offense convictions (Action Item)**

Sarah Bowles from the Commission staff presented the third issue of the Guidelines Subcommittee report.

Ms. Bowles referred Commissioners to the memorandum labeled “Proposed Seriousness Category Revisions for Subsequent Drug Offense Convictions.” She explained that this topic was first introduced at the December Commission meeting, at which time feedback was solicited from Commissioners regarding the reclassification of subsequent drug offenses sentenced pursuant to Criminal Law Article (CR), §§ 5-608 and 5-609. These statutes prescribe penalties for subsequent felony drug offenses involving narcotics and hallucinogenics. Ms. Bowles noted that the memo presented today contains largely the same content as the memo presented in December, with the exception being that the proposed revisions to the guidelines were revised based on feedback received at the December meeting.

Ms. Bowles reminded Commissioners that the MSCCSP staff received an inquiry from an assistant state’s attorney (ASA) questioning why the sentencing guidelines for subsequent drug offenses penalized pursuant to CR, § 5-608(d) are treated the same as first-time offenses penalized pursuant to CR, § 5-608(a). First-time violations of CR, §§ 5-608 and 5-609 involving narcotics and most hallucinogenics carry a 20-year statutory maximum penalty and are classified by the Commission as seriousness category III-B offenses. First-time violations of CR, § 5-609 involving MDMA also carry a 20-year maximum penalty and are classified as III-A offenses. Third subsequent violations of CR, §§ 5-608 and 5-609 carry a 25-year statutory maximum and are also classified as by the Commission as seriousness category III-B offenses. Fourth or subsequent violations of CR, §§ 5-608 and 5-609 carry a 40-year statutory maximum and, again, are also classified by the Commission as seriousness category III-B offenses. The same classification scheme exists for violations of CR, § 5-609 involving MDMA, in that first, second, third, fourth and subsequent offenses are all classified as III-A offenses despite carrying different maximum penalties.

The ASA questioned why a subsequent offense, which has a greater statutory maximum penalty, is treated by the guidelines the same as a first offense. This only became an issue following passage of the Justice Reinvestment Act in 2016. Prior to that, the statutory maximum penalties in place now were mandatory minimum penalties. The guidelines were always higher for individuals sentenced pursuant to these statutes to account for



the mandatory minimums. With passage of the Justice Reinvestment Act, those mandatory minimums became statutory maximum penalties, making the guidelines the same for subsequent drug offenses, regardless of the subsection for which the individual is convicted. In response, staff brought this issue to the attention of the Guidelines Subcommittee and the full Commission in December. After receiving feedback from the full Commission in December, the Guidelines Subcommittee again discussed the issue at its April Subcommittee meeting.

Ms. Bowles indicated that Table 1 on page 6 of the memo provides recommendations consistent with the discussion at December's meeting, which would increase the seriousness category by one for each of the subsequent drug offenses that carry 40-year maximum penalties. This means that the seriousness category for fourth or subsequent violations of CR, §§ 5-608 and 5-609 involving narcotics and most hallucinogenics will increase from III-B to III-C, while the seriousness category for fourth or subsequent violations of CR, § 5-609 involving MDMA will increase from III-A to III-B. Also consistent with the discussion at December's meeting, no changes are recommended to the seriousness categories for the subsequent drug offenses that carry 25-year maximum penalties. Ms. Bowles stated that the Subcommittee recommends the reclassifications proposed on page 6 because these classifications will provide more consistency with comparable offenses (based on their statutory maximum penalties) and to differentiate the guidelines calculations for first and subsequent offenders.

Having concluded her summary, Ms. Bowles turned the topic over to the Commission for further discussion.

Judge Avery thanked Ms. Bowles for her review of the issue and congratulated her on being accepted to law school. Judge Avery then asked if there were any comments or questions.

Delegate Bartlett asked if this was an issue that Delegate Bartlett and Senator Sydnor raised concerns about in a prior meeting.

Dr. Soulé responded that there were some concerns raised when the previous version of the memo was presented at the December Commission meeting, and the memo had been revised in response to those concerns.

Judge DeLeonardo asked if there were any additional comments or questions. Hearing none, he requested a motion to accept the Subcommittee's recommendation.

A motion was made and seconded to accept the recommendation of the Guidelines Subcommittee. **The Commission voted unanimously to adopt the Subcommittee's recommendation to increase the seriousness category by one for each of the subsequent drug offenses that carry 40-year maximum penalties.**



5. Executive Director Report – Dr. David Soulé

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

a. Introduction of new MSCCSP staff research analyst, Kathy Sanchez (Status report)

Dr. Soulé announced that he was pleased to introduce the newest member of the MSCCSP staff, Kathy Sanchez. Ms. Sanchez is working as a research analyst and started her position on January 4, 2023. Before joining the Commission, Ms. Sanchez worked in nonprofits completing research on civil forfeiture. He noted that her strong research, analytic, and writing skills have already proven to be an asset to the staff. Dr. Soulé asked the Commissioners to join him in welcoming Ms. Sanchez, as this was her first Commission meeting. Ms. Sanchez thanked Dr. Soulé for the introduction and stated that she was happy to be on board.

b. April 1, 2023, sentencing guidelines revisions (Status report)

Dr. Soulé reported that on April 1, 2023, the MSCCSP adopted revisions to the sentencing guidelines to account for cannabis-related legislation from the 2022 Legislative Session (Ch. 26 (H.B. 837), Acts of 2022). Specifically, HB 837, (1) substitutes the term marijuana with cannabis, (2) decriminalizes possession of 2.5 ounces or less of cannabis, (3) reduces the maximum penalty from 5 years to 3 years for unlawfully possess with intent to distribute, manufacture, possess production equipment—cannabis, and (4) decriminalizes possess or distribute controlled paraphernalia—cannabis. To account for these changes, the Commission issued new versions of the MSGM and the Guidelines Offense Table, and the corresponding updates were adopted in the Code of Maryland Regulations, effective April 1, 2023.

Key MSGM changes include replacing the term marijuana with cannabis throughout and updated sample cases. Additionally, the offense seriousness category for unlawful possession with the intent to distribute, manufacture, possess production equipment related to cannabis was decreased from IV to V to reflect the decrease in the maximum penalty from 5 years to 3 years. To inform practitioners regarding these changes, Dr. Soulé reported that the staff distributed a Guidelines E-News on April 1, 2023. The E-News also provided a reminder that pursuant to guidelines rule, adjudications based on acts that are no longer crimes should be excluded from the prior adult criminal record. As such, cannabis possession should be excluded from the calculation of the prior adult criminal record if: (1) It can be determined that a prior adjudication for cannabis possession involved 2.5 ounces or less; and/or (2) the offense has been expunged from the record or proven by the defense to have been eligible for expungement as a matter of right prior to the date of the instant offense. Unless otherwise eligible for expungement, Dr. Soulé noted that the calculation of the prior record remains unchanged for possession involving more than 2.5 ounces of cannabis, as this offense remains punishable by up to 6 months incarceration and/or a \$1,000 fine, pursuant to CR, § 5-601(c)(2)(i).



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

Dr. Soulé continued by reporting that the MSCCSP training coordinator, Katharine Pembroke, recently completed training on February 10, 2023, February 17, 2023, and April 24, 2023. The February 10 training was a webinar intended primarily for court staff and judicial law clerks; the February 17 training was a sentencing guidelines and MAGS 101 webinar for prosecutors, defense attorneys, and P&P agents; and the April 24, 2023, training was provided for the St. Mary's County State's Attorney's Office.

Additionally, Dr. Soulé noted that since the beginning of the year, he has met with judges and court staff from multiple judicial circuits. Meetings were completed with the judges in Harford and Garrett counties in January, with Charles and Washington counties in March, and Baltimore City and Baltimore County in April. Additional meetings are scheduled for Frederick and Prince George's counties in the coming months. Dr. Soulé stated that his goal is to meet with each jurisdiction every two to three years. He commented that the meetings are a great opportunity to share sentencing guidelines data, discuss recent guidelines updates, review the work of the Commission, and finally, to solicit feedback from the Judiciary regarding the sentencing guidelines and the work of the MSCCSP. He noted that some of the issues brought forth to the Subcommittee originate from these judicial meetings.

Judge Shaw asked if training is provided to law clerks across the state every year. Dr. Soulé noted that guidelines training was once part of the new law clerk orientation, but that process has now changed. Currently, new law clerks are now observing a sentencing guidelines training webinar as part of their new law clerk orientation, but it is not mandatory. Ms. Pembroke confirmed that the guidelines training webinar is available in the Judiciary's online catalog, where new law clerks can view the training when they onboard. Dr. Soulé also noted that the staff records all webinar training and makes them accessible on the Commission's website.

d. Review of HB 824 (2023 General Assembly Session) (Status report)

Dr. Soulé reported that on one of the last days of the 2023 General Assembly, House Bill 824 was passed enrolled with amendments. HB 824 alters the penalty for a violation of the prohibition on wearing, carrying, or transporting a handgun under Section 4-203(c)(2)(i) of the Criminal Law Article, increasing the maximum possible term of incarceration from 3 to 5 years. Additional key provisions of HB 824 include: 1) alterations regarding disqualifiers for possession of a regulated firearm under Section 5-133 of the Public Safety Article, 2) a requirement for the Department of State Police to transmit a summary of certain laws relating to firearms to persons who are registered firearm owners, 3) an additional requirement for the State Police to produce an annual report providing information about firearm permit applications, 4) an increase in fees for firearm applications, and 5) additional provisions for firearm training.

Most relevant to the work of the Sentencing Commission, Dr. Soulé noted that HB 824 also requires the MSCCSP to annually report to the Governor and General Assembly information regarding the number of charges, convictions, and sentences for violations



of Section 4-203 of the Criminal Law Article (wear, carry, transport a handgun) and Section 5-133(d) of the Public Safety Article (possession of regulated firearm by person younger than 21 years old). This is significant because the MSCCSP reporting requirement was a late amendment to the bill. Dr. Soulé noted that the original version of HB 824 had no impact on the MSCCSP, but that this amendment was passed during a voting session in the Senate Judicial Proceeding Committee on April 6, 2023. Dr. Soulé explained that the MSCCSP staff only became aware of this amendment after reading about the reporting requirement in *Maryland Matters* on April 10, 2023. Staff then reached out to the House Judiciary Committee to inquire about the amendment, but the bill had already passed both chambers. Dr. Soulé commented that there may have been a mistaken assumption that the Commission collects data on charges, in addition to convictions and sentences, because the amendment was altered, and the reporting requirement was assigned instead to the MSCCSP.

Dr. Soulé reminded Commissioners that the MSCCSP protocol requires the staff to inform the Commission about proposed legislation that directly impacts the operation of the MSCCSP. However, the timing of the late amendment and subsequent quick adoption of HB 824 prevented the MSCCSP from convening to review the impact prior to its adoption. At the conclusion of the General Assembly Session, Dr. Soulé noted that the MSCCSP staff received a request from a Department of Legislative Services analyst to submit a revised fiscal/operational impact statement because of the amendments to this bill. The MSCCSP staff consulted with the Chair and Vice-Chair, Judges DeLeonardo and Avery, and prepared a revised fiscal and operational impact statement to indicate that the amendment requiring the MSCCSP to submit an annual report regarding certain firearms charges would have a considerable operational and fiscal impact.

Specifically, Dr. Soulé explained that the impact statement notes that while the MSCCSP collects data on convictions and sentences for guidelines eligible offenses, it does not collect data on charges. Furthermore, the sentencing guidelines data are limited to convictions for guidelines-eligible cases prosecuted in the circuit courts. Offenses under CR, § 4-203 and PS, 5-133(d) are not always guidelines-eligible as both offenses may be prosecuted in the District Court where the sentencing guidelines are not applied. As of CY 2019, approximately 35% of sentences for violations of CR, § 4-203 were sentenced in District Court, and approximately 17% of sentences for violations of PS, § 5-133(d) were sentenced in District Court. These are sentences that would be missing from the Commission's current data collection.

Because the MSCCSP does not collect data (1) for charges or (2) for convictions and sentences occurring in District Court, Dr. Soulé stated that the enrolled bill's requirement that the MSCCSP report that information creates a considerable fiscal and operational impact, as the MSCCSP would need to collect that data from other sources. The MSCCSP staff submitted a fiscal and operational impact statement indicating that the reporting requirements would necessitate additional funding to hire staff to assist with the reporting of the requirement. Further, the impact statement clarified that the



MSCCSP does not collect any data on charges and collects data on only a subset of convictions and sentences for the offenses of interest.

Dr. Soulé concluded by noting that the reporting requirements take effect October 1, 2024. Accordingly, there may be an opportunity for the General Assembly to revisit this legislation during the 2024 session.

Judge DeLeonardo suggested that the information the bill is calling for may be housed elsewhere. As such, there might be legislative action taken to address this bill during its next session and that, perhaps, the reporting requirement could be amended to involve a different agency. Dr. Soulé noted that the charging information is not collected on an aggregate basis, but rather, by individual jurisdictions. Mr. Harvey confirmed this and noted that local enforcement agencies would have the charging information.

Judge Avery commented that the legislation calls for resources outside of the scope of the Commission, as aspects of the reporting required are not within the Commission's wheelhouse. She voiced concern that this requirement is not within the overall mission of the MSCCSP.

Judge DeLeonardo reiterated that, hopefully, this can be addressed during the next legislative session.

e. **Update on report on racial differences in guidelines-eligible sentencing events (Status report)**

As reported during prior Commission meetings, Dr. Soulé reminded Commissioners that the MSCCSP was asked during the legislature's review of the Commission's FY23 budget to develop a plan to study racial differences in sentences in Maryland's circuit courts. This request originated via a recommendation from a Department of Legislative Services (DLS) analyst and the legislative budget committees agreed with the recommendation. After receiving feedback from Commissioners, the staff submitted the plan for analysis to the legislature as required by July 15, 2022. The plan indicated that the MSCCSP would submit a full report on racial differences in guidelines-eligible sentencing events by July 15, 2023.

Dr. Soulé stated that the MSCCSP staff are currently working to complete a draft of this report. The staff expects to deliver the draft report to the full Commission on or before June 15, 2023, at which point staff will solicit feedback, incorporate revisions, and plan to submit the completed report on or before July 15, 2023.

6. Proposed MSCCSP meeting dates for 2023 (Action Item)

Judge DeLeonardo reminded Commissioners of the remaining meeting dates for the year and noted that the next two meetings will be virtual. The remaining dates are as follows:

- Tuesday, July 11, 2023 (virtual)
- Tuesday, September 12, 2023 (virtual)
- Tuesday, December 5, 2023



Judge DeLeonardo reminded Commissioners that the public comments hearing will also be held on December 5, 2023. He noted that the public is invited to make comments or requests before the Commission and further noted that in the past, issues or concerns raised during the public comments hearing have led to changes within the guidelines.

7. Old Business

None.

8. New Business and Announcements

None.

The meeting was adjourned at 6:45 p.m.