



Minutes

Maryland State Commission on Criminal Sentencing Policy
Videoconference
July 6, 2021

Commission Members in Attendance:

Honorable Brett R. Wilson, Chair
Honorable Shannon E. Avery, Vice-Chair
Senator Robert G. Cassilly
Honorable Brian L. DeLeonardo
Richard A. Finci, Esquire
Brian D. Johnson, Ph.D.
Senator Delores G. Kelley
Honorable Patrice E. Lewis
Alethea P. Miller
Delegate David Moon
Kathleen C. Murphy, Esquire, representing Attorney General Brian E. Frosh
Honorable James P. Salmon
Lisa M. Spicknall-Horner
Donald Zaremba, Esquire, *representing Public Defender Paul DeWolfe*

Staff Members in Attendance:

Sarah Bowles
Stacy Najaka, Ph.D.
Katharine Pembroke
David Soulé, Ph.D.

Visitors:

Mary Ellen Barbera, Chief Judge, Maryland Court of Appeals
Bill Ferguson, President, Maryland Senate

1. Call to order

MSCCSP Chair, Judge Wilson, called the meeting to order.

2. Roll call and declaration of quorum

The meeting began at 5:32 pm when attendance reached a quorum.

3. Recognition of departing Commissioners: Delegate Luke Clippinger, Brian DeLeonardo, and Senator Delores Kelley

Judge Wilson noted that the meeting would begin with a recognition of departing Commissioners and deferred to Dr. Soulé. Dr. Soulé stated that he would like to begin by recognizing Brian DeLeonardo. He noted that Mr. DeLeonardo has served on the Sentencing



Commission and as a member of the Guidelines Subcommittee since 2016 and will be sworn in as a judge for the Circuit Court of Carroll County on July 15, 2021. Dr. Soulé noted that the Commission will miss his expertise, thoughtful input, and balanced judgement. He presented him with a plaque in recognition of his service.

Mr. DeLeonardo thanked Dr. Soulé and stated that it has been a pleasure to be a part of the Sentencing Commission and he hopes to be able to work with the Commission in some capacity in the future.

Judge Wilson then introduced Chief Judge Mary Ellen Barbera and noted that she will be recognizing the departure of Senator Dolores Kelley. Chief Judge Barbera began by congratulating Senator Kelley on 25 years of service to the Sentencing Commission and its predecessor, the Study Commission. Chief Judge Barbera praised Senator Kelley for her visionary leadership over the years as she has worked to improve nearly every aspect of justice in Maryland. She thanked Senator Kelley for her passion in improving the lives of Marylanders and for her service on the Sentencing Commission as it strives to support fair and proportional sentencing.

Senator Kelley thanked Chief Judge Barbera and stated that she feels humbled to have had the privilege to learn from her peers.

Judge Wilson then introduced Senate President Bill Ferguson and stated that he would also like to recognize Senator Kelley. President Ferguson acknowledged Senator Kelley's impact beginning with the predecessor Study Commission and eventual Sentencing Commission. From its establishment, to the early formative years, to the ongoing impact of the Sentencing Commission, he emphasized that Senator Kelley has continued to fight for justice to ensure that our laws reflect our values. President Ferguson commented that sentencing is the heart and soul of the social contract. He noted that it is one thing to have a judicial system, but that it all comes down to enforcement and whether people believe it is fair. President Ferguson stated that it is a core fundamental tenet to our democratic society that the sentencing guidelines and the sentencing system reflect the values of its people. He further noted that the work of the Commission is the bedrock to democracy. President Ferguson thanked Senator Kelley for her leadership throughout the years and, by extension, thanked the other Commissioners for their important work to the people of Maryland.

Senator Kelley thanked both Chief Judge Barbera and President Ferguson for their remarks. She stated that she hoped she had done some good and noted that making good legislation and coming up with good judicial proceedings are all matters of real collaboration.

Judge Wilson then deferred to Dr. Soulé for further recognition of Senator Kelley. Dr. Soulé thanked Chief Judge Barbara and President Ferguson for their comments. He stated that the Commission staff has always felt the love and support of Senator Kelley, not only for the work of the Sentencing Commission, but also for the staff itself. He noted that the staff is grateful for her contributions and dedication over the years and presented her with a plaque in recognition of her service.



Senator Kelley stated that she was grateful for all the interaction and collaboration over the years, as everyone is working to make our society better and more reflective of justice.

Judge Wilson thanked Senator Kelley for her presence and leadership. He acknowledged that Delegate Luke Clippinger will also be leaving the Commission but noted that he was not able to attend tonight's meeting.

Chief Judge Barbera concluded her remarks by noting that the work of the Sentencing Commission is absolutely crucial to the people of Maryland and thanked the Commissioners for the work that they do.

4. Welcome new Commissioner, Delegate Sandy Bartlett

Judge Wilson reported that Delegate Sandy Bartlett had been recently appointed to the Sentencing Commission. Dr. Soulé stated that Delegate Bartlett was unable to attend the meeting and that her introduction would be resumed at the next meeting.

5. Approval of minutes from May 11, 2021, MSCCSP meeting

The Commission approved the minutes as submitted.

6. Guidelines Subcommittee Report – Judge Shannon Avery, Dr. David Soulé, Dr. Stacy Najaka and Sarah Bowles

Judge Avery stated that Dr. Soulé would present the Guidelines Subcommittee report, as she was unable to attend the Subcommittee's June meeting. Dr. Soulé noted that the Guidelines Subcommittee met via videoconference on June 22, 2021. The Subcommittee reviewed three items. These issues are presented as items 6a, 6b, and 6c on the agenda.

a. Proposed classification of new and revised offenses, 2021 Legislative Session (Action item)

Dr. Soulé reviewed how the Sentencing Commission has traditionally classified new and revised offenses and explained what is covered in the materials distributed for this meeting. Each year, the MSCCSP reviews new and revised criminal penalties and considers how the new and/or revised criminal penalties will fit within the Maryland sentencing guidelines. The task of classifying new and/or revised criminal offenses is designated to the Guidelines Subcommittee of the MSCCSP. These classifications are then presented to the full Commission for review. In preparation for this task, the Guidelines Subcommittee reviews all legislation from the legislative session and prepares a memorandum that identifies any new or revised criminal offenses that carry a maximum penalty of greater than one year of incarceration. The memorandum focuses on penalties of one year or greater because, by rule, the MSCCSP does not require classification of offenses that carry a maximum penalty of one year or less. Rather, these offenses are automatically assigned a seriousness category of VII.

Dr. Soulé referred Commissioners to the memorandum labeled, *Proposed Classification of New or Revised Offenses, 2021 Legislative Session*. This is an 18-page document, divided into three sections: (1) new offenses with a penalty of 1 year or more of



incarceration, (2) new offenses with no action needed and (3) additional amended offenses with no recommended action. Also provided was a supporting document labeled, *Combined file of legislation with new/revised offenses_2021*. This PDF combines all the legislation that is reviewed in the new or revised offenses memo. The bills appear in the order they are listed in the *Proposed Classification of New/Revised Offenses* memo.

Dr. Soulé noted that based on previously established protocol, the Guidelines Subcommittee offers seriousness category recommendations by examining currently classified offenses that are comparable based on the following: type of offense (person, drug, property); statutory maximum; misdemeanor/felony classification; and nature of the offense (when possible). For each new or amended offense, the memorandum presents the Guidelines Subcommittee-identified comparables at the bottom of each page or on the next page.

i. Chapters 11 and 35 (SB 208/HB 4 (2020)) create new offenses that prohibit a person who is not a licensee from completing the sale, rental or transfer of a rifle or shotgun other than a regulated firearm, except under certain circumstances; prohibit providing false information while conducting a transaction for a rifle or shotgun; and prohibit the sale, rental, transfer, or loan of a rifle or shotgun to a restricted person. This bill was passed by the Maryland Legislature and vetoed by the Governor in 2020. The Legislature overrode the veto, and the bill became law, per the Maryland Constitution, on February 12, 2021.

a. Chapters 11 and 35 (SB 208/HB 4)—Weapons Crimes—In General—Sell, rent, or transfer a rifle or shotgun by a person who is not a licensee; failure of licensee to comply with state and federal laws that apply to the sale, rental, or transfer of a rifle or shotgun; etc. (PS, § 5-204.1(f)(1))

The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offenses as a person offense with a seriousness category of VII, without opposition.

b. Chapters 11 and 35 (SB 208/HB 4)—Weapons Crimes—In General—Provide false information while conducting a transaction for the sale, rental, or transfer of a rifle or shotgun (PS, § 5-204.1(f)(2))

The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offenses as a person offense with a seriousness category of VI, without opposition.

c. Chapters 11 and 35 (SB 208/HB 4)—Weapons Crimes—In General—Sell, rent, transfer, or loan a rifle or shotgun to restricted person (convicted of a disqualifying crime, fugitive, habitual drunkard, etc.) (PS, § 5-207)



The Commission adopted the Guidelines Subcommittee's recommendation to classify the offenses as a person offense with a seriousness category of VI, without opposition.

- ii. Chapter 60 (SB 71)—Law Enforcement Miscellaneous Provisions—Intentional violation by a police officer of use of force standards resulting in serious physical injury or death to a person (PS, § 3-524(i)(2))

This bill creates a new offense that prohibits a police officer from intentionally violating use of force standards, provided in Section 3-524(d) of the Public Safety Article, resulting in serious physical injury or death to a person. This bill establishes that a sentence imposed for this offense may be separate from and consecutive to or concurrent with a sentence for any crime based on this act.

Dr. Soulé noted that based on the comparables, the Guidelines Subcommittee recommends classifying this offense as a person offense with a seriousness category of IV, though the Guidelines Subcommittee was not unanimous in their recommendation. One member suggested that this offense should be classified as a category V, similar to assault in the 2nd degree, as opposed to a seriousness category IV. It was noted that the offense was classified as a misdemeanor, like assault in the 2nd degree, and that victim injury points would likely be assigned to this offense, therefore enhancing the guidelines range. The remaining Subcommittee members believed the offense should be categorized as a category IV given that a violation of Maryland's Use of Force statute by a law enforcement officer requires the State to prove elements beyond those required for assault in the 2nd degree, specifically to include serious physical injury or death. In summary, by a vote of 3-1, the Subcommittee recommended classifying this offense as a person offense with a seriousness category of IV.

The Commission adopted the Guidelines Subcommittee's recommendation to classify the offenses as a person offense with a seriousness category of IV, without opposition.

- iii. Chapters 145 and 146 (HB 425/SB 623)—Telecommunications and Electronics, Crimes Involving—Knowingly possess ransomware with the intent to use the ransomware for the purpose of introduction into the computer, computer network, or computer system of another person without the authorization of the other person (CR, § 7-302(d)(4))

The relevant portion of the bill creates a new offense that prohibits a person from knowingly possessing ransomware with the intent to use the ransomware for the purpose of introduction into the computer, computer network, or computer system of another person without the authorization of the other person. Based on the identified comparables, the Guidelines Subcommittee recommended classifying this offense as a property offense with a seriousness category of V.



Dr. Soulé noted that the Subcommittee initially considered a seriousness category of VI for this offense, guided by many of the comparable offenses with three-year statutory maximum penalties. However, the Subcommittee agreed that the potential for damage and intent moves this offense to a more serious category. The Subcommittee agreed that the first listed comparable offense, which is *Unlawfully access, attempt to access, cause access to, etc., a computer, computer network, etc., to cause malfunction, interruption, alteration, damage, etc.; Unlawfully possess, identify, distribute, etc., a valid access code, less than \$10,000*, is particularly comparable in nature to the new offense under consideration. This offense carries a maximum penalty of 5 years and/or \$5,000 fine and is a seriousness category V. The Subcommittee agreed this offense was the best comparable and, therefore, recommended utilizing the same seriousness category of V for the new offense.

Mr. Zaremba noted that one of the other comparable offenses provided in the memo (*Unlawfully access, attempt to access, cause access to, etc., a computer, computer network, etc.; copy, attempt to copy, possess, etc., the contents of all or part of a computer database*), which is also contained under CR, § 6-302, has a statutory maximum penalty of 3 years and a seriousness category of VI. The new offense, which is contained in the same section of the Criminal Law Article, has a maximum penalty of two years. Mr. Zaremba questioned why an offense with a lesser penalty would have a higher seriousness category recommendation.

Dr. Soulé responded that the Subcommittee had a lengthy discussion about this offense. Because this new offense involves knowingly possessing ransomware with the intent to do harm to computer systems, the Subcommittee believed it warranted a higher seriousness category classification. Senator Kelley noted that these types of offenses are occurring more often than one would expect during a pandemic and they have the potential to affect millions of people. Mr. Finci suggested that the use of ransomware is an aggravator to merely accessing a database, and the element of ransomware makes it a more serious offense regardless of its penalty provisions.

Mr. Zaremba thanked the Commissioners for their responses.

Delegate Moon added that the House had this bill before them during the most recent legislative session, and at least one factor that may have led to the discrepancy between the offense's severity and penalty was the distinction between possessing versus actually using the ransomware. The bill that came before the House was a possession with intent crime. A political decision was made to reduce the penalty to two years because of debate between the possession versus use of the ransomware.

The Commission adopted the Guidelines Subcommittee's recommendation to classify the offenses as a property offense with a seriousness category of V, without opposition.



Judge Wilson stated that he needed to leave the meeting and would turn the lead over to the Commission's Vice Chair, Judge Avery.

- iv. Chapters 178 and 179 (HB 234/SB 607) create new offenses that prohibit a person from willfully and maliciously killing, injuring, or interfering with the use of a service animal, or allowing an animal that the person owns or over which the person has immediate control to kill, injure, or interfere with the use of a service animal.

- a. Chapters 178 and 179 (HB 234/SB 607)—Animals, Crimes Against—Willfully and maliciously interfere with the use of a service animal, or allow an animal the person owns or over which the person has immediate control to interfere with the use of a service animal (CR, § 10-626(c)(2))

The Commission adopted the Guidelines Subcommittee's recommendation to classify the offenses as a property offense with a seriousness category of VII, without opposition.

- b. Chapters 178 and 179 (HB 234/SB 607)—Animals, Crimes Against—Willfully and maliciously kill or injure a service animal, or allow an animal that the person owns or over which the person has immediate control to kill or injure a service animal (CR, § 10-626(c)(1))

The Commission adopted the Guidelines Subcommittee's recommendation to classify the offenses as a property offense with a seriousness category of VI, without opposition.

- v. Chapters 681 and 682 (HB 240/SB 187) create a new offense prohibiting a person from disclosing genetic genealogy data, forensic genetic genealogical (FGG) profiles, or DNA samples not authorized by a court order in the course of a forensic genetic genealogical DNA analysis and search (FGGS), or in the course of any criminal proceeding that arises from an FGGS. Additionally, this bill would create a new offense prohibiting a person from willfully failing to destroy genetic genealogy information, FGG profiles, or DNA samples that are required to be destroyed in accordance with CP, § 17-102(h).

- a. Chapters 681 and 682 (HB 240/SB 187)—Forensic Genealogy, Crimes Involving—Willfully fail to destroy genetic genealogy information, forensic genetic genealogical (FGG) profiles, or DNA samples that are required to be destroyed in accordance with CP, § 17-102(h) (CP, § 17-102 (j)(2))

The Commission adopted the Guidelines Subcommittee's recommendation to classify the offenses as a property offense with a seriousness category of VII, without opposition.

- b. Chapters 681 and 682 (HB 240/SB 187)—Forensic Genealogy, Crimes Involving—Disclose genetic genealogy data, forensic genetic genealogical



(FGG) profiles, or DNA samples not authorized by a court order in the course of a forensic genetic genealogical DNA analysis and search (FGGS), or in the course of any criminal proceeding that arises from an FGGS (CP, § 17-102 (i)(2))

The Commission adopted the Guidelines Subcommittee's recommendation to classify the offenses as a property offense with a seriousness category of V, without opposition.

Dr. Soulé noted that for the remainder of the memo (pp. 10-18), there is no recommended action for the Commission. No action is recommended for the new offense on page 10 from Chapter 144 (SB 17), criminally negligent life-threatening injury by motor vehicle or vessel (CR, § 3-212.1(e)), because the offense carries a 1-year maximum penalty and offenses with penalties of 1-year or less are automatically assigned a seriousness category of VII unless the Commission chooses to adopt a different seriousness category. Unless there is a proposal for further review, the Commission will proceed with classifying this as a category VII person offense.

Dr. Soulé further noted that no action is recommended for the changes to existing offenses as noted on pages 11-18 because there were no changes to the penalty structure for the specific offenses. Dr. Soulé stated that he would be happy to review any specific offenses with no designated actions, but he would defer to the Commission to decide if any offense-specific review is necessary. Seeing no further comment or questions regarding the new and revised offenses, the Commission moved onto the next subcommittee agenda item.

b. Proposed classification of previously unclassified offenses (Action item)

Dr. Soulé stated that Ms. Bowles would present the memorandum labeled, *Proposed Classification of Previously Unclassified Offenses*.

Ms. Bowles noted that as staff reviews new and revised penalties from each year's legislative session, they sometimes come across existing offenses that have not yet been classified by the Commission. These are typically less common offenses. The Commission's policy is to classify any offense with a penalty of greater than 1 year. This memo presents to the Commission four previously unclassified offenses with penalties of greater than 1 year, along with the Guidelines Subcommittee's recommendations as to their classification.

- i. State Government Article (SG), 20-1103 prohibits the injury, intimidation, or interference with protected housing activities (e.g., rental, sale, or buying of housing), because of a person's race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, national origin, or source of income, that results in either bodily injury or death.



- a. Human Relations, Crimes Involving—Injury, intimidation, or interference with protected housing activities that results in bodily injury (SG, §20-1103(c)(2))

The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offenses as a person offense with a seriousness category of IV, without opposition.

- b. Human Relations, Crimes Involving—Injury, intimidation, or interference with protected housing activities that results in death (SG, §20-1103(c)(3))

The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offenses as a person offense with a seriousness category of II, without opposition.

Ms. Bowles noted that SG, § 20-1103 contains a third offense, which is the injury, intimidation or interference with protected housing activities that results in neither bodily injury nor death and carries a maximum penalty of 1 year imprisonment. This offense is also not contained in the Guidelines Offense Table, but by guidelines rule, since the maximum penalty is 1 year or less, the offense is assigned a seriousness category VII.

- ii. Maryland Food, Drug, and Cosmetic Act—Violation of Maryland Food, Drug, and Cosmetic Act, subsequent offense (HG, § 21-1215(b)(2) (penalty))

The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offenses as a property offense with a seriousness category of VI, without opposition.

Ms. Bowles noted that for a 1st violation of the Maryland Food, Drug, and Cosmetic Act, the maximum penalty is 1 year and/or \$10,000. The 1st violation is also not contained in the Guidelines Offense Table, but by guidelines rule, since the maximum penalty is 1 year or less, the offense is assigned a seriousness category VII.

- iii. CDS and Paraphernalia—Paraphernalia—deliver or sell, or manufacture or possess with intent to deliver or sell, drug paraphernalia, previous conviction for deliver drug paraphernalia to minor by adult who is 3 or more years older (CR, § 5-619(d)(3))

The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offenses as a drug offense with a seriousness category of VII, without opposition.

- c. Continued review of cell-by-cell compliance analysis (Status report)

Dr. Najaka presented agenda item 6c. Dr. Najaka noted that the Guidelines Subcommittee initiated the current ongoing review of compliance by cell at its April 2021 meeting and continued the discussion at its recent June 2021 meeting. As previously noted, the primary purpose of the review is to examine whether the 65% compliance benchmark is being met



within the cells of the three matrices and to consider whether any changes to the guidelines ranges are warranted. Findings from the first step of the review were reported at the May Commission meeting.

Dr. Najaka briefly recapped that the first step considered compliance and strict compliance by matrix and cell for single count sentencing events in 2018-2020. The primary takeaway was that most of the cells with at least 50 cases are meeting the 65% compliance benchmark; however, when considering strict compliance, more than one-fourth of those cells have compliance rates less than 65%. Further, in most noncompliant cells, departures below the guidelines exceed departures above the guidelines.

Dr. Najaka noted that at the conclusion of the April discussion, the Guidelines Subcommittee agreed to consider at its June meeting the impact of the COVID pandemic on sentences and guidelines compliance. The Subcommittee also agreed to examine where the middle 65% of sentences falls for each cell.

Dr. Najaka stated that the materials provided for tonight's meeting include a memo summarizing the analysis considered by the Subcommittee at its June meeting and three corresponding sets of results, each of which she would review. The Subcommittee is not requesting any action by the Commission at this time but would like to inform the Commission of the progress of the review and the next step to be taken.

Dr. Najaka stated that the first document is titled, *Sentencing Guidelines Strict Compliance, By Matrix and Cell 1/1/2018 - 3/4/2020*. It details strict compliance by cell when sentencing events occurring during the COVID pandemic are excluded. As noted, the data considered for the ongoing review cover single count sentencing events during calendar years 2018-2020. For this review, the start date of the pandemic is identified as March 5, 2020, which is when Governor Hogan declared a State of Emergency. Using this start date, approximately 13% of sentencing events in the three-year time period covered by the review occurred during-COVID. To the extent that defendants sentenced during-COVID were diverted from incarceration or were incarcerated for shorter periods of time, one would expect to observe differences in strict compliance by matrix and cell when these sentences are excluded.

For reference purposes, the document with strict compliance rates by cell for the full three-year sample that was distributed for the May Commission meeting was provided again with the present meeting materials.

Dr. Najaka stated that the results show there are only four cells with at least 50 cases where the strict compliance rate differs when COVID sentences are removed (these cells are highlighted in the document with diagonal shading). For all four cells, there appears to be a slight "COVID discount" whereby the percentage of departures below the guidelines is smaller and/or the percentage of departures above the guidelines is larger when COVID sentences are excluded. However, the differences are extremely small, with rates generally



varying by no more than a few percentage points and all rates hovering close to the 65% benchmark. Thus, while there is some evidence of a COVID discount, it does not appear to be significantly impacting compliance rates in the three-year time period examined by the current review.

Dr. Najaka stated that the second document is titled, *One-Year Pre-COVID and During-COVID Sentencing Trends*. It takes a closer look at sentences and guidelines compliance for the one-year period prior to the COVID pandemic (3/5/2019 - 3/4/2020) as compared with the one-year period during the COVID pandemic (3/5/2020 - 3/4/2021). This report supplements the document just reviewed on the impact of COVID on sentencing, but it considers a different time period and a larger sample of sentencing events (namely, single and multiple count sentencing events, as opposed to single count only). The results provide convincing evidence of a COVID discount, particularly in select judicial circuits. Incarceration rates and average sentences declined, and compliance and above departures decreased while below departures increased. However, as noted, this discount does not appear to be affecting the compliance by cell results provided for the current review. This is likely due to two factors: (1) The compliance by cell analysis covers only a portion of the time period affected by the pandemic (3/5/2020 - 12/31/2020); and (2) the number of sentencing events occurring during the pandemic is small relative to the total number of sentencing events in the three-year time period examined by the current review. As such, staff advises including all sentencing events for calendar years 2018-2020 in the ongoing compliance review in order to maximize the number of sentencing events informing the review.

Dr. Najaka stated that the final document is titled, *Middle 65% of Sentences, By Matrix and Cell*. It details how the three matrices would appear if the guidelines ranges were revised to capture the middle 65% of sentences in each cell. The analysis is for illustrative purposes only. The provided ranges (listed in red) simply show within each matrix cell the lower and upper limits of the middle 65% of sentences in 2018-2020. It is possible for cell ranges to be shifted up or down from the middle 65% of sentences and still meet the compliance benchmark. Dr. Najaka also noted that any potential adjustments to the matrices will warrant a consideration of the proportionality with neighboring cell ranges.

Dr. Najaka noted that following the discussion of these materials at its June meeting, the Guidelines Subcommittee agreed that the next step in the review is that staff will (1) prepare proposed amendments to the property and drug matrices and (2) examine how both regular and strict compliance rates would change with those revisions. Wholesale changes to the matrices are expected since many of the cells have strict compliance rates below the 65% benchmark.

Dr. Najaka noted that staff will circulate the proposed amendments and corresponding compliance analysis to the Guidelines Subcommittee and Judge Wilson for their feedback within the coming weeks. The Subcommittee anticipates having specific revisions to the property and drug matrices to recommend to the Commission at its September meeting.



Potential revisions to the person offense matrix will be considered following the work to review the property and drug offense matrices.

Judge Avery asked for questions or comments. Senator Kelley noted that the Subcommittee and staff did a good job in preparing and reviewing the compliance by cell materials.

7. Executive Director Report – Dr. David Soulé

Dr. Soulé reported that he had four items to review.

a. Update on promulgation of recent sentencing guidelines amendments (Status report)

Dr. Soulé reminded Commissioners that at the May 11, 2021, MSCCSP meeting, the Commission voted to clarify the scoring of the victim injury component of the offense score. The amended language instructs that permanent victim injury points shall be awarded for offenses involving evidence of child pornography. He further noted that the proposed amendments were published in the July 2, 2021, edition of the Maryland Register. Public comment on the proposed amendments will be accepted through August 2, and the notice of final action should be published in the August 27, 2021, edition of the Maryland Register. Dr. Soulé stated that he expects the amendments to be adopted effective October 1, 2021.

b. MAGS update (Status report)

Dr. Soulé reported that the MSCCSP staff continue to work with programmers at the Department of Public Safety and Correctional Services to implement updates to the Maryland Automated Guidelines System (MAGS) so that it is more mobile friendly and renders properly whether it is viewed on a PC, Mac, tablet, or phone. He noted that these updates are in response to feedback received during last year's criminal justice community survey. Dr. Soulé stated that the staff should have more to report at the next business meeting, but as of now, there is some concern that these updates may be introducing too much change. As such, the staff may be sending out a survey to core MAGS users in order to receive feedback regarding potential changes.

c. Sentencing guidelines webinar training (Status report)

Dr. Soulé reported that the staff has conducted multiple webinar trainings since the start of the year. The trainings provide information on the background and goals of the sentencing guidelines, offer an overview of the sentencing guidelines calculation process, provide advice for avoiding common mistakes, offer examples of more complicated sentencing guidelines scenarios, and describe recent amendments to the guidelines with an emphasis on the April 1, 2021, update regarding guidelines-compliant binding pleas.



He further noted that a recording of the most recent training video is available to view on-demand from the MSCCSP website. Maryland Automated Guidelines System (MAGS) instructional videos are also available to view.

Dr. Soulé reported that the next scheduled webinar training will be offered on July 28, 2021. The webinar is intended for new and current law clerks and court staff and will emphasize how to utilize MAGS to complete sentence information on the guidelines worksheets.

d. Sentencing Snapshot report (Status report)

Dr. Soulé reported that the final item to discuss is the list of proposed topics for the *Sentencing Snapshot*. He reminded Commissioners that the *Sentencing Snapshot* is a series of topical mini-reports intended to provide a quick overview of sentencing trends and other topics of interest. The MSCCSP has published one edition every three months since the inception of the Snapshot in July 2020. In preparation for publication of future issues of the Snapshot, Dr. Soulé noted that the staff distributed a list of proposed topics with the meeting materials. He asked Commissioners to review the distributed list and to offer feedback on the proposed topics. He also encouraged Commissioners to share any ideas for topics that they believe may be well suited for coverage by the *Sentencing Snapshot*.

Judge Avery reiterated that Commissioners should review the list of proposed topics and provide feedback. Mr. Finci commented that a Snapshot on the proposed topic of pre-Justice Reinvestment Act (JRA) versus post-JRA sentencing trends would be particularly interesting in light of the Commission's current review of the sentencing matrices.

7. Remaining 2021 meetings

Dr. Soulé reminded Commissioners of the remaining meeting dates for 2021.

- a. September 14, 2021, 5:30 pm
- b. December 7, 2021, 5:00 pm

Dr. Soulé reported that the Commission is planning to hold the September 14 meeting in-person, with an option for those who would prefer to participate via videoconference.

8. Old business

None.

9. New business and announcements

Judge Avery stated that she would like to conclude the meeting by thanking Senator Kelley. She noted that she feels grateful and thankful to have worked with her and has learned so



much. She further noted that because of Senator Kelley’s advocacy, all of the debates and discussions over the years have opened her mind to various aspects of justice. Judge Avery stated that she has become a better Commissioner because of the guidance and history that Senator Kelley has shared.

Mr. Finci added that in all of the years he has served on the Commission, no one has opened his mind and caused him to examine preconceived notions more than Senator Kelley has. He noted that her wisdom has taught him so much, and he thanked her for her contributions.

Senator Kelley thanked all of the Commissioners and noted that their different perspectives have been particularly helpful, as they are practitioners who know the law in a way she does not. She further noted that wanting to think about justice in a way that crosses race, culture, periods of time, and disciplines has motivated her and stated that the Commissioners have taught her so much.

Judge Avery concluded the meeting.

The meeting adjourned at 6:36 pm.