



Minutes

Maryland State Commission on Criminal Sentencing Policy

Videoconference

July 9, 2024

Commission Members in Attendance:

Honorable Dana M. Middleton, *Chair*

Delegate J. Sandy Bartlett

Rodney R. Davis

Honorable Brian L. DeLeonardo

Katie Dorian, *representing Honorable Anthony G. Brown*

Richard A. Finci, Esq.

Angelina Guarino, *representing Secretary Carolyn J. Scruggs*

Brian D. Johnson, Ph.D.

Larry Johnson

Alethea P. Miller

Delegate David Moon

Kyle E. Scherer, Esq.

Donald Zaremba, Esq., *representing Public Defender Natasha Dartigue*

Staff Members in Attendance:

Lydia Becker

Sarah Bowles

Stacy Najaka, Ph.D.

Anabella Nosel

Katharine Pembroke

David Soulé, Ph.D.

Visitors: None

1. Call to Order

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

2. Declaration of Quorum

The meeting began at 5:33pm after a quorum had been established.

3. Approval of Minutes

The minutes from the May 7, 2024, MSCCSP meeting were approved as submitted.



4. Guidelines Subcommittee Report – Judge Brian DeLeonardo

Judge Middleton announced the next item on the agenda, the Guidelines Subcommittee Report. Judge DeLeonardo, Guidelines Subcommittee Co-Chair, noted that the Subcommittee's decisions were mostly unanimous and turned the discussion over to Dr. Soulé to present the report.

a. Proposed classification of new and revised offenses, 2024 Legislative Session (Action item)

Dr. Soulé first presented agenda item 4a, the proposed classification of new and revised offenses from the 2024 legislative session. He began by providing background about the Commission's process of classifying new and revised offenses.

Dr. Soulé noted that each year, the MSCCSP reviews new and revised criminal penalties and considers how they fit within the Maryland sentencing guidelines. The task of classifying new and revised criminal offenses is designated to the Guidelines Subcommittee, and those classifications are then presented to the full Commission for review. In preparation for this task, the staff reviews all legislation from the most recent 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 Commission 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 then referred Commissioners to the memorandum titled, *Proposed Classification of New or Revised Offenses, 2024 Legislative Session*. This is a 38-page document, divided into three sections: (1) new offenses with action recommended, (2) new offenses with no recommended action, and (3) changes to existing offenses with no recommended action. Also provided was a supporting document titled, *Combined file of legislation with new/revised offenses_2024*. 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 explained 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 staff-identified comparable offenses at the bottom of each page or on the next page.



Dr. Soulé began with the new offenses in 2024, starting on page one of the memorandum.

- i. Chapters 414 and 415 (HB 664/SB 575)—Protected Individuals, Protected Information—Knowingly publishing personal information of a protected individual if the individual knows or should know that publishing the information poses an imminent and serious threat to the protected individual; and its publishing results in assault, harassment, trespass, or malicious destruction of property (CJ, § 3-2304)

These bills, both titled the “Judge Andrew F. Wilkinson Judicial Security Act,” establish the Office of Information Privacy (OIP) in the Administrative Office of the Courts. The bills authorize a “protected individual,” or OIP (on behalf of a protected individual), to make a request for a person or governmental entity to not publish “personal information” of the protected individual (or to remove such information from an existing publication), as specified. The bills establish related requirements and procedures, as well as civil remedies for noncompliance, and provide that an individual may not knowingly publish the personal information of a protected individual if (1) the individual knows or reasonably should know that publishing the personal information poses an imminent and serious threat to the protected individual and (2) the publishing results in an assault in any degree, harassment, trespass, or malicious destruction of property. A violator is guilty of a misdemeanor and subject to a maximum penalty of 18 months imprisonment and/or a \$5,000 fine.

Based on the comparable offenses listed on page 2 of the memorandum, the Guidelines Subcommittee unanimously agreed that this new offense was comparable to a second-degree assault and therefore recommends classifying this offense as a person offense with a seriousness category of V.

Dr. Soulé explained that the Commission would be asked to vote individually on the classification for each of the six new offenses listed on pages 1, 3, 5, 7, 9, and 11 of the memorandum.

Dr. Soulé then opened it up for discussion.

Mr. Johnson asked to whom this bill applies, whether it is just judges or also law enforcement or anyone who has a duty to incarcerate an individual. Ms. Bowles noted that the bill specifies who the protections apply to, that is Maryland state and federal judges. Delegate Bartlett confirmed that the bill was intended to apply to the Judiciary. Mr. Finci noted that the bill includes any type of judge, including magistrates, and their family members.



Judge DeLeonardo made a motion to adopt the recommendation of the Subcommittee. Mr. Finci seconded the motion. **The Commission adopted the Guidelines Subcommittee’s recommendation to classify the offense as a person offense with a seriousness category of V, without opposition.**

Before moving on to the next offense, Dr. Soulé noted that while reviewing the comparable offenses for this new offense, the Subcommittee asked the staff to review the seriousness category classification for the fifth listed comparable on page 2, *Threaten to take the life, kidnap, or cause physical injury to State or local official, deputy or assistant State’s Attorney, or assistant Public Defender* (currently a seriousness category VI offense), and any other similar offenses in Maryland that involve threats to public officials, including elected officials. The staff will most likely present their findings to the Subcommittee in advance of the September Commission meeting.

Delegate Bartlett noted that the Legislature just passed legislation prohibiting a person from threatening election officials (SB 480/HB 585) Dr. Soulé clarified that the offense he referred to, *Threaten to take the life, kidnap, or cause physical injury to State or local official, etc.*, was an existing offense and the Guidelines Subcommittee had questioned whether it was classified appropriately given the serious nature of threatening a public official and recent current events surrounding elections. The Commission would review SB 480/HB 585 later in the memo.

- ii. Chapter 418 (SB 40) prohibits a person from operating or attempting to operate a vessel on the waters of the State while prohibited from doing so by the court, subject to specified criminal penalties for a first, second, and third or subsequent offense. This bill also alters from one year to two years the amount of time a court may prohibit a person from operating a vessel on the waters of the State if the person is convicted of operating or attempting to operate a vessel while under the influence of alcohol. Finally, the bill authorizes a court to prohibit a person from operating a vessel on the waters of the State for up to five years if the person’s violation resulted in the death of another person.
 - a. Chapter 418 (SB 740)— Boating Offenses—Operating or attempting to operate a vessel while the person is prohibited from operating a vessel under NR, § 8-738(e)(3)(i), 1st offense (NR, §8-738(c)(1))

Based on the comparable offenses identified on page 4, the Guidelines Subcommittee unanimously recommends classifying the first offense as a property offense with a seriousness category of VII.



- b. Chapter 418 (SB 740)— Boating Offenses—Operating or attempting to operate a vessel while the person is prohibited from operating a vessel under NR, § 8-738(e)(3)(i), 2nd offense (NR, §8-738(c)(2))

The Guidelines Subcommittee unanimously recommends classifying the second offense as a property offense with a seriousness category of VI.

- c. Chapter 418 (SB 740)— Boating Offenses—Operating or attempting to operate a vessel while the person is prohibited from operating a vessel under NR, § 8-738(e)(3)(i), 3rd or subsequent offense (NR, §8-738(c)(2))

The Guidelines Subcommittee unanimously recommends classifying the third or subsequent offense as a property offense with a seriousness category of V.

Dr. Soulé then opened it up for discussion. Hearing no discussion, Judge Middleton asked if there was a motion to adopt the Guidelines Subcommittee’s recommendation. Delegate Bartlett moved to adopt the recommendation. Mr. Finci seconded the motion. **The Commission adopted the Guidelines Subcommittee’s recommendation to classify the first, second, and subsequent offenses as property offenses with seriousness categories of VII, VI, and V, respectively, without opposition.**

- iii. Chapter 101 (SB 273) prohibits a person from intentionally operating an unmanned aircraft over a correctional facility for the purpose of photographing or recording images of the correctional facility through the use of the unmanned aircraft unless authorized to do so. The bill also prohibits a person from using an unmanned aircraft to deliver any contraband to a person detained or confined in a place of confinement. A violator of either of these offenses is guilty of a misdemeanor and subject to a maximum penalty of imprisonment for three years and/or a \$1,000 fine.

- a. Chapter 101 (SB 273)— Harboring, Escape, and Contraband— Intentionally operate an unmanned aircraft over a correctional facility to photograph or record images of the facility without authorization (CS, §8-804)

Based on the comparable offenses identified on page 6, the Guidelines Subcommittee unanimously recommends classifying this offense as a property offense with a seriousness category of VI.

- b. Chapter 101 (SB 273)— Harboring, Escape, and Contraband— Contraband—Deliver contraband using an unmanned aircraft (CR, § 9-417.1)



The Guidelines Subcommittee unanimously recommends classifying this offense as a property offense with a seriousness category of VI.

Dr. Soulé then opened it up for discussion. Hearing no discussion, Judge Middleton asked if there was a motion to adopt the Guidelines Subcommittee's recommendation. Mr. Johnson moved to adopt the recommendation. Mr. Finci seconded the motion. **The Commission adopted the Guidelines Subcommittee's recommendation to classify both offenses as property offenses with a seriousness category of VI, without opposition.**

- iv. Chapter 789 (HB 1498) prohibits a person from aiding or abetting the unauthorized practice of massage therapy in the State. A violator is guilty of a felony and on conviction is subject to (1) for a first offense, a fine of up to \$5,000 or imprisonment for up to one year or (2) for a subsequent offense, a fine of up to \$20,000 per day or imprisonment for up to five years.

- a. Chapter 789 (HB 1498)— Fraud, Miscellaneous— Aiding or abetting the unauthorized practice of massage therapy in violation of HO, § 6–501(b), 1st offense (HO, §6-504(b)(1))

Based on the comparable offenses identified on page 8, the Guidelines Subcommittee recommends classifying the first offense as a property offense with a seriousness category of VII, with one abstention from Mr. Finci due to a conflict of interest.

- b. Chapter 789 (HB 1498)— Fraud, Miscellaneous— Aiding or abetting the unauthorized practice of massage therapy in violation of HO, § 6–501(b), subsequent offense (HO, §6-504(b)(2))

The Guidelines Subcommittee recommends classifying the subsequent offense as a property offense with a seriousness category of VI, with one abstention from Mr. Finci due to a conflict of interest.

Dr. Soulé then opened it up for discussion. Hearing no discussion, Judge Middleton asked if there was a motion to adopt the Guidelines Subcommittee's recommendation. Judge DeLeonardo moved to adopt the recommendation. Delegate Bartlett and Ms. Miller seconded the motion. **The Commission adopted the Guidelines Subcommittee's recommendation to classify the first and subsequent offenses as property offenses with seriousness categories of VII and VI, respectively, without opposition. Mr. Finci abstained from the vote due to the same conflict of interest.**

- v. Chapters 858 and 859 (HB 5/SB 130)—Nudity and Related Sexual Displays— Indecent exposure when person knows or should know that a minor is present (CR, § 11-107(d)(2))



These bills codify the prohibition on committing indecent exposure. A violator is guilty of a misdemeanor and subject to the existing statutory penalty of imprisonment for up to three years and/or a fine of up to \$1,000. The bills also establish a new offense that prohibits a person from committing indecent exposure with prurient intent when the person knows or reasonably should know that a minor is present, and the minor is at least two years old and more than four years younger than the perpetrator. A violator is guilty of a misdemeanor and subject to a maximum penalty of 5 years imprisonment and/or a fine of up to \$10,000. Based on the comparables identified on page 10 of the memorandum, the Guidelines Subcommittee unanimously recommends classifying the 5-year misdemeanor as a person offense with a seriousness category of V.

Dr. Soulé then opened it up for discussion. Mr. Zaremba asked why, in looking at the comparable offenses, the Subcommittee recommended a seriousness category V for this offense, when the offense, *Commit crime of violence in the presence of a minor*, carries the same 5-year maximum penalty and is classified as a seriousness category VI. Dr. Soulé noted that the Subcommittee was primarily driven by the fact that *Indecent exposure* is a seriousness category VI offense. Given that this offense requires indecent exposure plus the presence of a minor, the Subcommittee opted to classify it as one category more serious than simple indecent exposure.

Judge DeLeonardo noted that the Subcommittee focused on how the offense compared to other sexual-related acts and did not specifically discuss the offense, *Commit crime of violence in the presence of a minor*.

Judge Middleton asked if there was a motion to adopt the Guidelines Subcommittee's recommendation. Ms. Miller made a motion to adopt the recommendation of the Subcommittee as to the classification of this offense. Dr. Johnson seconded the motion. **The Commission adopted the Guidelines Subcommittee's recommendation to classify the offense as a person offense with a seriousness category of V, without opposition.**

vi. Chapters 20 and 21 (SB 480/HB 585)—Election Offenses— Threatening election official or immediate family member of election official (EL, § 16-904)

Senate Bill 480/House Bill 585 are emergency legislation that prohibit a person from knowingly and willfully threatening to harm an election official or an immediate family member of an election official because of the official's role in administering the election process. The bills also prohibit knowingly sending, delivering, parting with, or making for the purpose of sending or delivering, such



a threat. A person who violates these prohibitions is guilty of a misdemeanor and subject to imprisonment for up to three years and/or a fine of up to \$2,500.

Similar to the discussion with the first offenses, the Guidelines Subcommittee believes this offense involving threats to an election official or immediate family member is comparable to a second-degree assault. Therefore, the Subcommittee unanimously recommends classifying the new offense as a person offense with a seriousness category of V.

Dr. Soulé then opened it up for discussion. Delegate Bartlett stated that she had a question related to the previously discussed legislation, HB 5/SB 130, and offered to hold her question until after the Commission voted on this offense.

Hearing no discussion, Judge Middleton asked if there was a motion to adopt the Guidelines Subcommittee's recommendation. Mr. Finci made a motion to adopt the recommendation of the Subcommittee as to the classification of this offense. Mr. Zaremba and Dr. Johnson seconded the motion. **The Commission adopted the Guidelines Subcommittee's recommendation to classify the offense as a person offense with a seriousness category of V, without opposition.**

Judge Middleton returned to Delegate Bartlett's question. Delegate Bartlett expressed concern that the comparable offense listed for HB 5/SB 130, *Commit crime of violence in the presence of a minor*, is only classified as a seriousness category VI and not a V. Judge Middleton noted that Dr. Soulé stated that the Staff plans to revisit the seriousness category classification for CR, § 3-708 in advance of the next Subcommittee meeting. She asked if this offense could be added to that review. Dr. Soulé confirmed that the Commission has the authority to review previous classifications and that the Subcommittee could review this offense as well. The Staff will look at the data and ask the Subcommittee to review the offense at its next meeting.

Dr. Soulé noted that there is no recommended action by the Guidelines Subcommittee for the remainder of the document (pp. 13-38). The Guidelines Subcommittee recommends no action on the remaining offenses for two reasons. These bills either (1) offer no change to the criminal penalty structure for the specific offenses or (2) they are new offenses with a maximum penalty of 1-year or less. The Commission has a long-standing policy regarding offenses with penalties of 1-year or less whereby these offenses are automatically assigned a seriousness category of VII unless the Commission chooses to adopt a different seriousness category. For one of these two reasons, the Guidelines Subcommittee recommends no action is needed for all the remaining legislation that is reviewed starting on page 13 of the memo.



Dr. Soulé noted that he was happy to review any specific legislation and corresponding offenses with no designated action, but he would defer to the Subcommittee to decide if any legislation or offense-specific review is necessary.

Judge Middleton asked whether the Commissioners had reviewed the remaining offenses requiring no action by the Commission. Various Commissioners visually indicated that they had reviewed the remaining offenses.

Mr. Finci asked if one of the legislative members could explain the rationale behind raising the driving while under the influence (DUI) fines from \$1,000 to \$1,200. Mr. Finci questioned if it was just a matter of inflation. Delegate Moon suggested that this bill was part of a multifaceted DUI update bill addressing ignition interlocks, probation before judgment (PBJ), and DUI expungement, and that the fine was not the primary focus of debate.

Dr. Johnson noted that the bill provides that 20% of the fines will be directed towards the Maryland Trauma Physicians Services Fund. Dr. Johnson suggested that the 20% increase in the fine was to account for this additional funding.

Delegate Moon recalled that, separate from the House Judiciary Committee discussions, there was a hunt for revenue for very specific line items, those were schools, transportation, and trauma care. The fine for these DUI offenses and other auto infractions, including speeding in a work zone, were raised to generate funds for trauma care.

Dr. Soulé concluded the discussion of new and revised offenses from the 2024 legislative session.

b. Proposed classification of CDS proceeds offense (Action item)

Dr. Soulé stated that Dr. Najaka would present agenda item 4b from the Guidelines Subcommittee report, the proposed classification of CDS proceeds offenses. Dr. Najaka referred Commissioners to the corresponding meeting memorandum, *Classification of CDS Proceeds Offenses*.

Dr. Najaka reported that the staff recently identified a subsequent offense with a maximum penalty greater than one year that has not been assigned a seriousness category. Although the first offense has been classified, the subsequent offense has not. Accordingly, the Staff identified comparable offenses to inform its seriousness category recommendation to the Guidelines Subcommittee. In doing so, the Staff concluded that the first offense may need to be reclassified to a less stringent seriousness category than currently assigned to be consistent with other offenses and to reflect the difference in penalty between a first violation and a subsequent violation.



As such, the Guidelines Subcommittee recommends that the Commission classify the subsequent offense and reclassify the first offense.

Dr. Najaka noted that the offense descriptions and their maximum penalties are listed on the top of page 2 of the memorandum. A first violation is subject to 5 years and/or the greater of \$250,000 or twice the value of the proceeds. It is currently a category IV drug offense, and the Guidelines Subcommittee recommends that the Commission reclassify it as a category V offense. A subsequent violation is subject to 10 years and/or the greater of \$500,000 or 5 times the value of the proceeds. This offense is not currently classified, and the Guidelines Subcommittee recommends that the Commission classify it as a category IV drug offense.

To inform the Commission's consideration of these recommendations, the memorandum contains a list of comparable offenses, sample cases illustrating the guidelines for these offenses under various scenarios, and a summary of the available sentencing guidelines data for first offenses. Regarding the latter, the MSCCSP has received only 11 sentencing guidelines worksheets involving a first violation. Thus, the statistics in Table 1 should be interpreted with caution. Keeping that in mind, the average non-suspended sentence was 7 months, and 8 of the 11 defendants did not receive any incarceration.

Dr. Najaka concluded her summary and turned the discussion over to the Subcommittee, noting that she would be happy to answer any questions.

Judge Middleton thanked Dr. Najaka for her presentation and asked if Commissioners had questions.

Dr. Johnson asked about the rationale behind the high fines for these offenses. He noted that the comparable offenses had much lower fines. He asked whether this type of fine was normal. Dr. Soulé agreed that the amount was unusual but did not know the rationale. Judge Middleton noted that she had never seen a fine that high. The maximum fine for the comparable offenses was \$100,000.

Judge Middleton asked if there was a motion to adopt the seriousness classifications for this offense. Mr. Zaremba made a motion to adopt the recommendation of the Subcommittee. Mr. Finci seconded the motion. The Commission adopted the Guidelines Subcommittee's recommendation to classify the offense as a person offense with a seriousness category of V, with one vote in opposition.



c. Proposed revisions to the list of common sentencing guidelines departure reasons
(Action item)

Dr. Soulé stated that the staff policy analyst, Lydia Becker, would present the final item on the Guidelines Subcommittee report, the proposed revisions to the list of common sentencing guidelines departure reasons. Ms. Becker referred Commissioners to the corresponding meeting memorandum, *Updating List of Common Departure Reasons*.

Ms. Becker noted that during its August 30, 2023, meeting, the Guidelines Subcommittee initiated a review of the list of common reasons for sentencing guidelines departures to consider whether these reasons should be updated. Following its June 18, 2024, meeting, the Guidelines Subcommittee recommends revisions to this list of common departure reasons. These revisions were guided by a survey of Maryland Circuit Court judges, which was distributed at the 2024 Maryland Judiciary Conference, as well as prior MSCCSP data on sentencing guidelines departures. The memorandum presents the proposed revisions to the Maryland Sentencing Guidelines Manual (MSGM) and the Code of Maryland Regulations (COMAR). Proposed revisions include clarifying the current departure instructions and the MSCCSP's purpose for collecting data on departure reasons.

Proposed revisions to the downward departure reasons include removing the following currently listed reasons: (1) Offender was influenced by coercion or duress; (2) Offender had diminished capability for judgement; and (3) Victim's participation in the offense lessens the offender's culpability.

Proposed additions to the list of downward departure reasons include the following: (1) Offender's age/health; (2) Offender amenable to probation or other community supervision; and (3) Offender's criminal history is less severe than represented by offender score.

Proposed revisions to the upward departure reasons include removing the following currently listed reasons: (1) Offender committed a 'white collar' offense; and (2) Offender's significant participation in major controlled substance offense.

Proposed additions to the list of upward departure reasons include the following: (1) Offender's criminal history is more serious than represented by offender score; and (2) The parties reached a plea agreement that called for an increased sentence.

Ms. Becker noted that, if approved by the Commission, the Staff will make the corresponding changes to the MSGM and COMAR and distribute the new list of departure reasons to circuit court judges.



Ms. Becker concluded her presentation.

Judge Middleton and Dr. Soulé thanked Ms. Becker for her presentation. Judge Middleton asked Commissioners if they had any questions.

Mr. Zaremba expressed concern that one of the recommendations, based on the survey results, is to remove from the list of common reasons for downward departure that the offender had diminished capability for judgement. Mr. Zaremba wondered whether judges do not select this reason because the language is not specific. For instance, someone can have a diminished capacity for judgment because they are voluntarily intoxicated, which generally is not regarded as a mitigating circumstance. Alternatively, someone can have a diminished capacity for judgement because they suffer from an intellectual or mental disability.

Mr. Zaremba emphasized that the Supreme Court in *Atkins v. Virginia* held that, as part of 8th amendment jurisdiction, individuals with intellectual disabilities have a lesser moral culpability compared to those without disabilities. He noted that Justice Stevens went to great lengths to explain how someone with an intellectual disability lacks the same executive functioning capabilities and is more susceptible to being led astray and to being a follower than someone without a disability. Mr. Zaremba suggested that the list of departure reasons provided by the Commission recognize that certain factors lessen one's culpability. He expressed concern that it would send a bad message to remove from the list any reference to intellectual or mental disabilities. He stated that this would imply that Maryland does not consider the impact of intellectual and mental disabilities on one's culpability.

Judge Middleton suggested that diminished capability for judgment is likely something considered in the plea agreement and articulated to the court when the parties present the agreement. Therefore, intellectual and mental disabilities may be encompassed under the plea agreement departure reason. Mr. Zaremba agreed but noted that not all cases are resolved via pleas. Some cases are resolved via trials. Mr. Zaremba noted that Justice Stevens, in *Atkins*, discussed how you could have someone who is found not criminally responsible, but they still lack judgment because of an intellectual or mental disability. Given their disability, this individual would be less likely to take the advice of their lawyer to take a plea agreement. This rationale is why the Supreme Court held that the 8th amendment prohibits the execution of people with intellectual disabilities. Their intellectual or mental disability does not absolve them from culpability, rather, it lessens their moral culpability.



Mr. Zaremba noted that the Commission has not revised the list of departure reasons since 2001, and jurisprudence has evolved since that time. For instance, *Atkins* recognizes that intellectual disabilities are a reason for mitigation. When the Commission provides a list of departure reasons, they indicate priorities and reflect factors that the court should consider. Mr. Zaremba noted, however, he does not like the “diminished capacity” language, which comes from the federal government, though the federal government makes it clear that the term does not apply to voluntary intoxication.

Dr. Soulé noted that the Commission’s common departure reasons are not intended to be those reasons that the Commission says are valid reasons for departure. The instructions have been revised to make clear that these are the most commonly-provided reasons for departure. These reasons were updated based on the survey results. Judges may enumerate any reason for departure.

Dr. Soulé acknowledged Lydia for noting that one of the departure reasons provided in Minnesota is “age, infirmity, or reduced physical or mental capacity.” Dr. Soulé suggested that the Commission could revise the new reason number 3 from “the offender’s age/health” to “the offender’s age or physical or mental health.”

Judge DeLeonardo agreed with Mr. Zaremba’s concerns. Judge DeLeonardo suggested that the “diminished capacity” language is one reason that judges do not select this departure reason. He suggested that perhaps the term is meant to mean impaired judgment at time of offense, rather than diminished capacity in terms of competency. He noted that someone could be convicted of a serious offense committed while intoxicated. Although intoxication is not a defense to the crime, it is a factor the court may consider at sentencing. He further suggested that if “diminished capacity for judgment” refers to a generic impaired judgment at the time of the offense, then it would include a factor like intoxication.

Judge Middleton suggested that the “diminished capacity” language could be reworded to encompass these concerns, instead of eliminated altogether, and she noted that the most recent judicial conference emphasized mental health.

Delegate Bartlett asked whether judges cited in their explanation for “other” reasons for departure anything related to capacity, mental health, or intoxication. Ms. Becker referred to Appendix A of the memorandum, which includes several “other” reasons for departure, one of which is age/health. She noted that the “other” reasons listed in this appendix did not cite anything specific to intoxication or mental health.



Delegate Bartlett asked about the 4.7% of departure reasons coded as “other” and how those reasons could be broken down. Dr. Soulé noted that the responses in this category were such a mix of answers that they could not be classified. Largely, they were just one-off responses. Staff recoded most “other” reasons cited by judges but could not do so for those 4.7% of responses. Dr. Soulé added that he could not say for certain whether intoxication was listed as a one-off other reason in the fiscal year 2023 data included in the memorandum.

Dr. Soulé suggested that the Commission could consider rewording the “diminished capacity for judgment” reason. For simplicity, though, Dr. Soulé recommended amending the new reason 3 to “age or physical/mental health.” Dr. Soulé suggested that this revision would be cleaner because it would keep the same number of reasons (8 each) for above and below departures. Further, this language gets at the same “diminished capability.”

Judge DeLeonardo expressed concern that diminished capability and physical mental/health are two different considerations. There is the age and health of the person as they stand before you at sentencing. There is also the age and health of the person at the time of the offense. Judge DeLeonardo provided the following example. He had a defendant who was making pipe bombs. The defendant blew himself up with the bombs. He was not impaired at time of offense, but by sentencing he had significant medical issues that Judge DeLeonardo considered as reason for a downward departure. Judge DeLeonardo expressed that health and age to him mean at the time of sentencing.

Mr. Finci moved to create a new downward departure reason based on Judge DeLeonardo’s points.

Judge DeLeonardo suggested that the Commission could revise the current departure reason, “The offender had a minor role in the offense” to also include an offense-oriented factor like impaired judgement at the time of the offense.

Judge DeLeonardo asked whether there is a time frame for making these decisions. He proposed that the Guidelines Subcommittee could work together to approve language and bring it back at a subsequent meeting. Or, the Commission could approve the language now, with directions that the Guidelines Subcommittee would draft the appropriate language to address these concerns.

Dr. Soulé stated that there was no timeline for these decisions. He noted that the Commission could decide now, or the issue could be referred back to the Guidelines



Subcommittee to consider alternative language. Dr. Soulé added that there does not have to be an even number of upward and downward reasons.

Dr. Soulé suggested that the Commission table the motion and ask the Guidelines Subcommittee to take another look at the language. Judge Middleton stated that, to table the issue, the Commission needs to propose a date to revisit the topic and asked whether September would work. Dr. Soulé confirmed that the issue could be revisited at the Commission's September 10, 2024, meeting.

Judge DeLeonardo asked that Commissioners send any recommended language to Dr. Soulé. Judge DeLeonardo thanked the Commission Staff for their involvement in the survey and noted that, given the amount of work that went into the survey, it is a good idea to table the issue and improve the language. Judge DeLeonardo motioned to table the discussion pertaining to revising the departure reasons until Sept 10, 2024, so that the Guidelines Subcommittee could take another look at the language. **The motion to table the departure reasons discussion until the September 10, 2024, meeting passed with no opposition.**

Dr. Soulé concluded the Guidelines Subcommittee Report.

5. Executive Director Report – Dr. David Soulé

Dr. Soulé stated that he had six items to discuss as part of the Executive Director Report. The sixth item was added after the agenda and supporting materials were distributed on June 27, 2024

a. Introduction of Anabella Nosel, new staff Research Assistant (Status report)

Dr. Soulé was pleased to introduce the new MSCCSP staff Research Assistant, Anabella Nosel. Ms. Nosel recently started her position on June 17, 2024. He expressed enthusiasm for her addition to the team and is looking forward to her valuable contributions. She will be working closely with the Maryland circuit courts to collect and manage the sentencing guidelines data. He said Ms. Nosel had already proven to be a tremendous asset and asked the Commission to welcome her, as this was her first Commission meeting. Ms. Nosel thanked the Commission noting that it was a pleasure and honor to meet them. Judge Middleton expressed that she looks forward to seeing more of Ms. Nosel.

b. MAGS 12.0 deployment, July 1, 2024 (Status report)

Dr. Soulé stated that, on July 1, 2024, the MSCCSP deployed the latest version of the Maryland Automated Guidelines System (MAGS), MAGS 12.0, after working on the updates over the past year. MAGS 12.0 enhances the overall function and usability of



the application through various improvements. It includes a more mobile-friendly format and a simplified sentence screen to allow for easier data entry by court staff. The update also includes a feature to duplicate previously submitted worksheets for subsequent sentence modifications, a feature to easily designate generally suspended sentences, and a feature to automatically add the count number and worksheet ID to the guidelines worksheet PDF. The staff has already received from justice partners positive feedback regarding the MAGS 12.0 updates.

Dr. Soulé recognized the tireless efforts of MSCCSP staff who worked diligently with the Department of Public Safety and Correctional Services (DPSCS) programmers to oversee the updates to the MAGS application. While DPSCS programmers made changes to the code, MSCCSP staff identified the necessary changes, described those changes, provided oversight for the programmers, completed hours of quality assurance testing, documented errors that need to be fixed, and then finally updated the necessary training and support materials ahead of deployment. He noted that the tedious and efficient work was a result of the combined efforts of MSCCSP. Dr. Soulé emphasized the efforts of the staff training coordinator and MAGS help desk manager, Katharine Pembroke. Ms. Pembroke oversaw the updates and went above and beyond to ensure the smooth deployment of MAGS 12.0. Dr. Soulé thanked Ms. Pembroke for her effort and dedication on behalf of MSCCSP staff and the Commission. Ms. Pembroke thanked the Commission for their kind words.

c. Sentencing guidelines trainings/feedback meetings (Status report)

Dr. Soulé informed Commissioners that, ahead of the July 1 release of MAGS 12.0, Ms. Pembroke provided multiple MAGS-related training sessions on June 25, 26, and 28. These meetings highlighted the updates to Commission justice partners, and a recording of this webinar is available on the MSCCSP website. Dr. Soulé highlighted that Ms. Pembroke also created two new MAGS instructional videos that have also been uploaded to the website. The first is intended for prosecutors and Parole and Probation Agents who initiate the sentencing guidelines. The second is intended for judge and court staff and focuses on how to enter sentence information in MAGS.

d. Sentencing Snapshot, Issue 12 (Status report)

The fourth item Dr. Soulé introduced was the release of Issue 12 of the Sentencing Snapshot on June 3, 2024. Issue 12 provides sentencing trends for juveniles in Maryland circuit courts. For context he explained that the Sentencing Snapshot is a series of topical mini-reports that provides a brief review of sentencing trends and other topics of interest through an infographic. The MSCCSP hopes the Snapshots will aid the public's understanding of sentencing policy and practice. He encouraged the Commission to



share any suggested topics for future issues of the Sentencing Snapshot with MSCCSP staff.

e. Plan for MSCCSP 25-year anniversary commemorative booklet (Status report)

Dr. Soulé then provided a plan to create a commemorative booklet marking the 25-year anniversary of the MSCCSP. The MSCCSP was created July 1, 1999, with the adoption of HB 602 from the 1999 Legislative Session. The Maryland General Assembly created the MSCCSP as an independent agency to support fair and proportional sentencing policy and to maintain the State's voluntary sentencing guidelines for criminal cases sentenced in the circuit courts. In recognition of this milestone anniversary, the staff is preparing a booklet to recognize the service and contributions of the various commissioners over the last 25 years and to highlight the Commission's significant accomplishments. The staff's goal is to complete the booklet in advance of the December 3, 2024, MSCCSP public comments hearing. Dr. Soulé encouraged the Commission to share any suggestions regarding the booklet with MSCCSP staff.

f. Maryland Equitable Justice Collaborative Criminal Law & Sentencing Reform Committee Update (Status report)

The final item Dr. Soulé presented was an update on his participation in the Maryland Equitable Justice Collaborative (MEJC), specifically the Criminal Law and Sentencing Reform Committee. MEJC was created in October 2023 as a joint initiative led by the Office of the Attorney General (OAG) and the Maryland Office of the Public Defender (MOPD) in partnership with the Judge Alexander Williams Center for Education, Justice & Ethics at the University of Maryland, College Park, and the Bowie State University Institute for Restorative Justice (USM). It was established with the directive of reducing the mass incarceration of African Americans and other marginalized groups in Maryland prisons and jails. MEJC's goal is to examine the scope and causes of this crisis and to develop a comprehensive plan for reform and recommendations by January 2025. To achieve this, the MEJC formed seven work groups to focus on the issues that drive incarceration rates. Dr. Soulé was invited to join one of the workgroups, the Criminal Law and Sentencing Reform Committee (hereafter "the Committee"). The Committee began meeting in December 2023. The MEJC leadership reviewed multiple proposed ideas and directed the Committee to act on three priority items which follows:

- 1) Commission a study of the racial and jurisdictional disparities in the charging, conviction, and sentencing for certain drug and violent offenses, including felony murder, robbery, and sex offenses.
- 2) "Create a pilot program that requires judges to use a risk/needs assessment tool developed in consultation with the Department of Parole and Probation during sentencing".



- 3) Reduce unnecessary pretrial confinement by a) changing the District Court discovery rules so that prosecutors must give discovery to the defense within a reasonable timeframe, and b) develop a uniform civilian complaint review process across all State's Attorney's Offices .

The committee was instructed by the MEJC leadership to finalize proposals addressing these three priorities by August 1, 2024. Dr. Soulé explained that through his involvement with the Committee there is a shortage of details to share beyond the summary directives. However, he plans to update the Commission on the Committee's work on any notable developments. He concluded his report and asked if there were any questions.

Judge Middleton said she had a question regarding MEJC's request to commission a study. Dr. Soulé clarified that MEJC is asking the Committee to solicit a study, not necessarily asking the MSCCSP to be responsible for creating a study. He reiterated that the proposal contains limited details, but he does not expect the Committee to ask the Commission to take the lead on a study. Dr. Soulé anticipates that the Commission may be asked to provide data to support the study.

Judge Middleton explained that her question was regarding a possible deadline to establish who, or what agency, would be responsible for the study. She recognized that Dr. Soulé answered her inquiry as MEJC did not provide detailed information in their proposal.

6. Remaining 2024 MSCCSP Meetings (Status report)

The remaining MSCCSP meetings were noted in the agenda:

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

7. Old Business/New Business/Announcements

Judge Middleton recognized and congratulated Dr. Soulé on his 20 years of service to the Commission as Executive Director. She said he is well known throughout the State for his hard work and dedication. She noted the Commission's appreciation for his effortless contributions for both the MSCCSP and the State of Maryland. Dr. Soulé thanked the Commission for their kind words.

The meeting was adjourned at 6:52 p.m.