



## Minutes

Maryland State Commission on Criminal Sentencing Policy  
Judiciary Education and Conference Center  
Annapolis, MD 21401  
July 10, 2018

### Commission Members in Attendance:

Honorable Glenn T. Harrell, Jr., Chair  
Honorable Shannon E. Avery, Vice-Chair  
LaMonte E. Cooke  
William M. Davis, Esquire, *representing Public Defender Paul B. DeWolfe*  
Honorable Brian L. DeLeonardo  
Barbara Dorsey Domer  
Brian D. Johnson, Ph.D.  
Senator Delores G. Kelley  
Honorable Patrice E. Lewis  
Kathleen C. Murphy, Esquire, *representing Attorney General Brian E. Frosh*  
Honorable James P. Salmon  
Rachel Sessa, *representing Secretary Stephen T. Moyer*

### Staff Members in Attendance:

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

### Visitors:

Linda Forsyth, Chief of Staff for Senator Kelley; Claire Rossmark, Department of Legislative Services

### 1. Call to order

Judge Harrell called the meeting to order.

### 2. Roll call and declaration of quorum

The meeting began at 5:32 pm when attendance reached a quorum. Judge Harrell acknowledged the passing of Commissioner Rick Finci's father, and advised that he will be unable attend the meeting. Senator Kelley asked that the minutes reflect an excused absence.

### 3. Approval of minutes from the May 8, 2018 MSCCSP business meeting

The Commission approved the minutes as submitted.



#### 4. Guidelines Subcommittee Report – Judge Shannon Avery

Judge Avery stated that Dr. Soulé would provide the Guidelines Subcommittee report and requested that the items be addressed in reverse of the order listed on the agenda.

a. Proposed classification of new and revised offenses, 2018 Legislative Session (Action item)

Dr. Soulé noted that the Guidelines Subcommittee met via teleconference on June 28, 2018, to review the proposed classification of new/revised offenses from the 2018 Legislative Session, an annual task completed by the Commission. Dr. Soulé summarized the process the Commission traditionally follows to classify new and revised offenses. 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 offenses with maximum penalties of greater than one year because, by rule, the MSCCSP does not require the classification of offenses that carry a maximum penalty of one year or less. Rather, these offenses are automatically assigned a seriousness category of VII. The task of classifying new and/or revised criminal offenses is designated to the Guidelines Subcommittee. The Guidelines Subcommittee's recommended classifications are then presented to the Commission for review and consideration for adoption. Seriousness category classification recommendations for new and revised offenses are made by examining currently classified offenses that are comparable based on the following characteristics: (1) type of offense (person, drug, or property); (2) statutory maximum; (3) misdemeanor/felony classification; and (4) nature of the offense (when possible).

Dr. Soulé referred the Commission to the memorandum, *Proposed Classification of New/ Revised Offenses, 2018 Legislative Session*. Dr. Soulé noted that this memo is divided roughly into 4 sections (New Offenses, Changes to Existing Offenses, New Offenses-No action recommended, and Changes to Existing Offenses-No action recommended). Staff also provided two additional supporting documents to help guide the classification of the new and revised offenses. The first document, *Combined file of legislation with new\_revised offenses 2018*, is a PDF that contains all of the bills that are reviewed in the *Proposed Classification* memorandum. The second document separated out one piece of legislation reviewed in the *Proposed Classification* memorandum (Chapter 12, SB 812), an annual corrective bill.

i. Chapter 500 (HB 1292) – Sexual Crimes – Engaging in sexual contact with a person in law enforcement's custody (CR, § 3-314).

Dr. Soulé noted that Chapter 500 (HB 1292) creates a new offense prohibiting law enforcement officials from engaging in sexual contact, vaginal intercourse, or sexual acts with a person in the custody of the law enforcement officer.



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

- ii. Chapter 365 (SB 769) – Extortion and Other Threats – Sextortion – Causing another to engage in sexual activity or in a visual representation of sexual activity by threatening behavior (CR, § 3-709).

Dr. Soulé noted that Chapter 365 (SB 769) creates a new offense prohibiting individuals from causing another to either engage in sexual acts or, as a subject in the production of a visual representation or performance, engage in or simulate certain sexual acts by using certain threatening behavior.

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

- iii. Dr. Soulé noted that Chapter 252 (SB 707) creates a grouping of three new rapid fire trigger activator offenses.

- a. Chapter 252 (SB 707) – Assault Weapons – Unlawfully transporting into the State, manufacturing, possess, sell, offer to sell, transfer, purchase, etc., a rapid fire trigger activator (CR, § 4-305.1(a); CR, § 4-306(a))

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

- b. Chapter 252 (SB 707) – Assault Weapons – Use of a rapid fire trigger activator in the commission of a felony or crime of violence, 1<sup>st</sup> offense (CR, § 4-306(b)(2))

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

- c. Chapter 252 (SB 707) – Assault Weapons – Use of a rapid fire trigger activator in the commission of a felony or crime of violence, subsequent (CR, § 4-306(b)(3))

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



iv. Dr. Soulé noted that Chapter 146 (HB 1029) creates a grouping of three new offenses prohibiting individuals from carrying, wearing, or transporting a handgun loaded with ammunition. This bill also states that the court may not suspend any part of the mandatory minimum sentence for subsequent offenses, thus creating a non-suspendable mandatory minimum for a subsequent violation with a loaded handgun.

- a. Chapters 146 (HB 1029) – Handguns – In General – Handgun—unlawful wearing, carrying, etc. a loaded handgun, 1st weapon offense, generally (CR, § 4-203(c)(2)(i))

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

- b. Chapters 146 (HB 1029) – Handguns – In General – Handgun—unlawful wearing, carrying, etc. a loaded handgun, 2<sup>nd</sup> weapon offense, generally (CR, § 4-203(c)(3))

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

- c. Chapters 146 (HB 1029) – Handguns – In General – Handgun—unlawful wearing, carrying, etc. a loaded handgun, more than two prior weapons offenses, generally (CR, § 4-203(c)(4))

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

- v. Chapter 317 (SB 324) – Alcoholic Beverages – Selling or providing alcoholic beverages to an individual under the age of 21 in Washington County, 3<sup>rd</sup> and subsequent offenses (AB, §31-2702)

Dr. Soulé noted that Chapter 317 (SB 324) increases the penalties for subsequent offenses of selling or providing alcoholic beverages to an individual under the age of 21 in Washington County. Previously all subsequent offenses were punishable by a fine not exceeding \$500. Dr. Soulé noted that this offense was previously not a guidelines-eligible offense because it did not carry a possibility of incarceration, but now that it does, the Guidelines Subcommittee recommends classifying it as a property offense with a seriousness category of VII.

Dr. Soulé noted that the Guidelines Subcommittee had some discussion whether this offense should be classified as a property or person offense,



but ultimately recommended the property category because similar county-specific alcoholic beverage provisions were previously classified as property offenses.

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

- vi. Dr. Soulé noted that Chapters 144 and 145 (HB 291/SB 1137) increase the maximum incarceration penalty for certain witness intimidation offenses from five years to ten years.

- a. Chapters 144 and 145 (HB 291/SB1137) – Influencing or Intimidating Judicial Process – Induce false testimony (witness or victim intimidation) (CR, § 9-302(c)(1))

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

- b. Chapters 144 and 145 (HB 291/SB1137) – Influencing or Intimidating Judicial Process – Retaliation for testimony, reporting a crime, performance of juror's or officer of the court's duties (CR, § 9-303(c)(1))

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

- c. Chapters 144 and 145 (HB 291/SB1137) – Influencing or Intimidating Judicial Process – Intimidating or corrupting jurors, etc.; obstructing justice (CR, § 9-305(c)(1))

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

- vii. Chapter 12 (SB 812) – Commercial Fraud, Other – Providing an unlicensed loan (FI, § 11-203.1(a); FI, § 11-222)

Dr. Soulé noted that Chapter 12 (SB 812) is listed in the memo as a change to an existing offense, which technically is accurate. However, it is also a new offense from 2017 that was previously unclassified. Dr. Soulé noted that Chapter 12 is an annual corrective bill, and this offense appears here because it previously included an obsolete reference to the wrong section of the Code. The Guidelines Subcommittee identified the offense



from this corrective bill. Given that the offense carries a statutory maximum incarceration penalty greater than one year, the Guidelines Subcommittee is now asking the Commission to review it.

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

The Commission followed the recommendation of the Guidelines Subcommittee to take no action with respect to the offenses on pages 11 through 29 of the *Proposed Classification* memorandum. These were either new offenses that have a statutory maximum of one year or less, and by rule are classified as seriousness category VII unless the Commission decides otherwise, or existing offenses amended in ways that did not change the penalty structure of the offense or changed the penalty structure of the offense, but maintained a statutory maximum of one year or less. For the existing offenses amended in ways not substantively relevant to the sentencing guidelines, some nonsubstantive changes to COMAR 14.22.02.02 and the Guidelines Offense Table are nevertheless necessary (e.g., changes to subsection designations).

- viii. Chapter 460 (HB 755) – Election Offenses – Paying or promising to pay a campaign finance entity under another name (EL, § 13-602)
- ix. Chapters 825 and 826 (HB 740/SB 693) – Commercial Fraud, Other – Owning, operating, or controlling a ticket website with a prohibited lower-level domain name (CL, § 14-4003)
- x. Chapters 338 and 339 (HB 1087/SB 758) – Fraud, Miscellaneous – Operating a micro-market without a license (BR, § 17-706)
- xi.
  - a. Chapter 250 (HB 1302) – Assault and Other Bodily Woundings— Other – Failing to comply with an interim extreme protection order, a temporary risk protective order, or a final extreme risk protective order, 1<sup>st</sup> offense (PS, § 5-610(a)(1))
  - b. Chapter 250 (HB 1302) – Assault and Other Bodily Woundings— Other – Failing to comply with an interim extreme protection order, a temporary risk protective order, or a final extreme risk protective order, subsequent (PS, § 5-610(a)(2))
- xii. Chapter 484 (SB 728) – Fraud, Miscellaneous – Selling a battery operated smoke alarm (PS, § 9-109)



- xiii.
- a. Chapter 852 (SB 743) – Motor Vehicle Offense – Entering into a peer-to-peer car sharing program where the cost is based upon distance, knowing that the vehicle’s odometer is not accurate (TR, § 18.5-401(a))
  - b. Chapter 852 (SB 743) – Motor Vehicle Offense – Deceiving a shared vehicle driver as to the distance the shared vehicle traveled where the cost of the peer-to-peer car sharing program is based upon distance (TR, § 18.5-401(b))
- xiv. Chapter 365 (SB 769) – Stalking and Harassment – Revenge porn (CR, § 3-809)
- xv.
- a. Chapter 619 (HB 312) – School Security – Obstructing, hindering, or interfering with a school bus driver (ED, § 26-104)
  - b. Chapter 619 (HB 312) – Mass Transit, Crimes Involving – Obstructing, hindering, or interfering with a public transportation worker (TR, § 7-705)
- xvi. Chapters 427 and 428 (HB 388/SB 170) – Violating Condition of Release – Violating condition of pretrial or post-trial release with an original charge of violating Title 3, Subtitle 3 of the Criminal Law Article against a minor, a crime of violence, or a crime against a victim who is a person eligible for relief (CP, § 5-213.1)
- xvii. Chapter 790 (HB 1297) – Commercial Fraud, Other – Violating loan disclosure provisions (CL, § 12-106(b),(c); CL, § 12-114(c))
- xviii.
- a. Chapter 143 (SB 101) – Weapons Crimes—In General – Unlawful use of a firearm in commission of felony or crime of violence, 1<sup>st</sup> offense (CR, § 4-204(c)(1))
  - b. Chapter 143 (SB 101) – Weapons Crimes—In General – Unlawful use of a firearm in commission of felony or crime of violence, subsequent (CR, § 4-204(c)(2))
- xix. Chapter 790 (HB 1297) – Weapons Crimes—In General – Possession of regulated firearm after having been convicted of a crime of violence or select drug crimes (PS, § 5-133(c))





- xx.
- a. Chapters 498 and 499 (HB 700/SB 528) – Hate Crimes – Crimes against persons, groups, or property because of race, color, religious beliefs, sexual orientation, gender, disability, national origin, or homelessness—resulting in death (CR, § 10-304(2)(i); CR, § 10-306(b)(2)(penalty))
  - b. Chapters 498 and 499 (HB 700/SB 528) – Hate Crimes – Crimes against persons, groups, or property because of race, color, religious beliefs, sexual orientation, gender, disability, national origin, or homelessness—involved separate felony (CR, § 10-304(2)(i); CR, § 10-306(b)(1)(penalty))
- xxi.
- a. Chapters 706 and 707 (HB 319/SB 160) – Truancy – Inducing, or attempting to induce, a child to be unlawfully absent from school (ED, § 7-301(e)(1))
  - b. Chapters 706 and 707 (HB 319/SB 160) – Truancy – Employing or harboring a child who is unlawfully absent from school (ED, § 7-301(e)(1))
  - c. Chapters 706 and 707 (HB 319/SB 160) – Truancy – Failing to ensure that a child attends school, 1<sup>st</sup> offense (ED, § 7-301(e)(2)(a))
  - d. Chapters 706 and 707 (HB 319/SB 160) – Truancy – Failing to ensure that a child attends school, subsequent (ED, § 7-301(e)(2)(b))
- xxii. Chapter 601 (SB 874) – CDS and Paraphernalia – Distribute, possess, manufacture, or use cannabis diverted from a qualifying patient, caregiver, licensed grower, or licensed dispensary (HG, § 13-3313)
- xxiii.
- a. Chapters 144 and 145 (HB 291/SB 1137) – CDS and Paraphernalia – Manufacture, distribute, dispense, or possess certain Schedule I through V non-narcotics, large amounts as specified in CR, § 5-612 (CR, § 5-612)
  - b. Chapters 144 and 145 (HB 291/SB 1137) – CDS and Paraphernalia – Paraphernalia—deliver or sell, or manufacture or possess with intent to deliver or sell, drug paraphernalia, 1<sup>st</sup> offense (CR, § 5-619(d)(2)(i))
  - c. Chapters 144 and 145 (HB 291/SB 1137) – CDS and Paraphernalia – Paraphernalia—deliver or sell, or manufacture or possess with intent to deliver or sell, drug paraphernalia, subsequent (CR, § 5-619(d)(2)(ii))





- xxiv. Chapter 343 (HB 67) – Commercial Fraud, Other – Selling or installing a fixture or other device that does not limit water consumption in accordance with the adopted standards (BO, § 12-605(a)(2); BO, § 12-607)
- xxv. Chapters 272 and 273 (HB 630/SB 289) – Election Offenses – In Frederick County, an applicant, or his agent, making a contribution to a member of the governing body of Frederick County during the pendency of the application (GP, § 5-862(b)(2))
- xxvi. Chapters 305 and 306 (HB 287/SB 461) – Alcoholic Beverages – County-specific provisions concerning selling or providing alcoholic beverages to habitual drunkards [, individuals with intellectual disabilities or individuals whose family member, or guardian has given written notices], subsequent (AB, § 9-2704; AB, § 16-2704; AB, § 18-2704; AB, § 22-2705; AB, § 24-2704; AB, § 25-2705; AB, § 27-2704; AB, § 31-2704)

b. Proposal for descriptive analysis of the multiple victim stacking rule (Action item)

Dr. Soulé referred the Commission to the memo entitled, *Proposal for Descriptive Analysis of Multiple Victim Stacking Rule*. Dr. Soulé explained that, currently, the multiple victim stacking rule instructs that, “when there is a single 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.” This rule provides for an enhanced recommended guidelines range in cases involving multiple victims.

Dr. Soulé noted that, an assistant state’s attorney contacted the Commission with concerns regarding the application of the multiple victim stacking rule, specifically her understanding that it be limited to sentencing events containing only a single criminal event, rather than both single and multiple criminal events. At the May 8, 2018, meeting, Commissioners discussed the issue and there was a consensus that the current instructions for the multiple victim stacking rule, contained in the Maryland Sentencing Guidelines Manual (MSGM) and COMAR, do not preclude the rule’s application to multiple criminal events. At the same time, the Commission agreed the language in the manual could be clarified. The Commission voted to adopt the revised language, beginning on page 3 of the memo, in both the MSGM and COMAR.

Dr. Soulé additionally noted that during the April 2018 Guidelines Subcommittee meeting, Mr. Finci requested that the application of the multiple victim stacking rule be studied by the Commission staff. Mr. Finci further discussed his request at the May 8 business meeting.



Dr. Soulé noted that, during the May 8 business meeting, Mr. Finci explained that he requested an examination of guidelines data on the application of the multiple victim stacking rule to determine whether the multiple victim stacking rule is creating usable guidelines ranges. At that time, Mr. Finci noted that the use of the multiple victim stacking rule creates wider ranges, and he expressed concern that wider ranges may be less useful to judges. Mr. Finci suggested an examination of how the wider ranges are being used by judges.

Dr. Soulé noted that, at the May 8 meeting, Commission staff agreed to develop a proposal for a descriptive analysis of the multiple victim stacking rule. Dr. Soulé presented the proposal for descriptive analysis, starting on page 2 of the memo.

Dr. Soulé explained that the proposal called for the following descriptive analyses:

- An examination of the most recent five years of sentencing guidelines data (calendar years 2013 through 2017).
- The frequency of sentencing events in which the multiple victim stacking rule was applied, statewide, by year, and by jurisdiction.
- The guidelines compliance rates for sentencing events in which the multiple victim stacking rule was applied versus not applied.
- The ABA-plea frequency for sentencing events in which the multiple victim stacking rule was applied versus not applied.
- Where in the guidelines range the guidelines-applicable sentence falls for sentencing events in which the multiple victim stacking rule was applied versus not applied. For instance, if a sentence falls within the guidelines range, how close is it to the lower end of the range versus the upper end of the range? If a sentence falls below the guidelines range, how far below the lower limit of the range does it fall? If a sentence falls above the guidelines range, how far above the upper limit of the range does it fall?

Dr. Soulé noted that the Guidelines Subcommittee also considered whether judges should be surveyed to ask for feedback on whether the broader ranges resulting from the multiple victim stacking rule help their sentencing decisions. Dr. Soulé noted, however, that it can be difficult to receive survey responses. Therefore, the Subcommittee decided to hold off on conducting any surveys until the Commission has a chance to review the results from the descriptive analysis.

Judge Avery stated that she agreed with the proposal and suggested that, if a survey is conducted, it should be a targeted survey. Judge Avery suggested that the Commission reach out to several judges with experience in applying the multiple victim stacking rule and solicit their feedback, rather than conducting a judiciary-wide survey.



Judge Harrell asked whether when the results are reported, there may be additional research inspired by those results. Dr. Soulé stated that the findings would be presented to the Commission and the Commission could then decide where to go from there.

Senator Kelley suggested that the analyses also examine the multiple victim stacking rule in terms of geographic spread, the size of counties, demographic characteristics, and sentencing variations. Judge Avery agreed with Senator Kelley's suggestions.

Mr. Deleonardo asked to clarify whether, at this point, the analyses would be a burden to staff. Dr. Soulé confirmed that the analyses were not a burden to staff at this time.

Dr. Johnson noted that Mr. Finci's main concern is that the guidelines ranges are not useful because they become so wide with the application of the multiple victim stacking rule. To that end, Dr. Johnson suggested that staff also look at how much the ranges change when the multiple victim stacking rule is applied. Mr. DeLeonardo commented that Dr. Johnson's suggestion would be more of a subjective analysis and would be impacted by the number of victims in the sentencing event. Dr. Soulé noted that, if the Commission was in favor, staff could look at how the ranges change with the application of the multiple victim stacking rule.

Mr. DeLeonardo asked if there was any preliminary data to suggest how many cases apply the multiple victim stacking rule in a year. Dr. Soulé referred to Ms. Bowles who stated that less than 100 cases per year apply the rule. Mr. DeLeonardo stated that, based on that data, staff could provide figures indicating the number of victims included in sentencing events applying the multiple victim stacking rule. Dr. Soulé confirmed that staff could calculate these figures.

Judge Avery asked whether Dr. Johnson would be okay with proceeding with the proposal, with an understanding that the additional analyses he suggested would be conducted. Dr. Johnson stated that this was okay.

Mr. Cooke made a motion to accept the staff's proposed descriptive analysis of the multiple victim stacking rule. Judge Salmon seconded the motion.

**The Commission unanimously voted to accept the staff's proposed descriptive analysis of the multiple victim stacking rule.**

- c. Revisiting the offender score instructions for scoring multiple prior convictions from a single criminal event (Action item)

Dr. Soulé referred the Commission to the memo entitled, *Instructions for Scoring Multiple Prior Convictions from a Single Criminal Event*, and noted that he would also be presenting a few slides to accompany the memo.



Dr. Soulé noted that this agenda item was first considered at the April 2018 Guidelines Subcommittee meeting and then at the subsequent May 8, 2018, Commission meeting. At the May 8 meeting, the Subcommittee recommended the proposed revisions, contained in the memo, with the exception of option 2 related to scoring one's prior juvenile record. Dr. Soulé noted that the other revisions contained in the memo related to scoring multiple prior *adult* convictions from a single criminal event. Dr. Soulé reminded the Commission that these other revisions were previously agreed on by the Subcommittee, but were included again in this memo because the Commission did not vote on them at the May meeting.

Dr. Soulé noted that option 2 was presented by staff, at the May Commission meeting, as potential alternate language. Specifically, the staff presented option 2 as an alternate to consider whether it may be more appropriate to instruct that “only one finding of a delinquent act should be counted for a single *adjudicatory hearing*,” thereby mirroring the terminology used by the juvenile court, rather than to instruct that “only one finding of a delinquent act should be counted for a single *criminal event*.” Dr. Soulé additionally noted that the staff confirmed with Dr. Smith, at the Maryland Data Analysis Center (MDAC), that the new juvenile score adopted effective July 1, 2018, was created using scoring logic consistent with option 2.

Dr. Soulé noted that, after some discussion at the May 8 meeting, the Commission agreed that the alternate language for the juvenile delinquency score instructions should go back to the Subcommittee for review prior to being considered for adoption by the Commission. As such, during their June 28, 2018, teleconference, the Subcommittee considered the two options for the juvenile delinquency score instructions presented in the memo.

To help guide the discussion, Dr. Soulé referred the Commission to a presentation slide which reviewed the pros and cons for option 1 and option 2.

Dr. Soulé noted the following pros for option 1:

1. Option 1 more closely mirrors how the adult prior criminal record is scored in the guidelines (i.e., those scoring the guidelines would count one finding of a delinquent act for each single *criminal event*).
2. Option 1 better reflects the severity of juvenile record by allowing multiple criminal events to impact the score, regardless of whether they are heard in a single hearing or multiple hearings. Dr. Soulé provided the following example. If a juvenile had a single hearing for multiple adjudications arising from separate criminal events (e.g., three carjackings on three different dates), then each separate adjudication would be scored and this may better reflect the severity of the juvenile's record.



3. Individuals completing the guidelines worksheet are not juvenile attorneys and, therefore, may not be as familiar with the juvenile court terminology referred to in option 2.

Dr. Soulé noted the following cons for option 1:

1. Option 1 does not match the scoring instructions used in the juvenile delinquency study or the juvenile score adopted by the Commission. Dr. Soulé noted that this is also the first listed pro for option 2.
2. It is more difficult to ascertain whether multiple findings of a delinquent act relate to a single criminal event or multiple criminal events than it is to identify hearings. The individual who scores the guidelines will easily be able to distinguish hearing dates when viewing the juvenile record, but that same individual will not always be able to access the necessary level of detail about multiple findings of a delinquent act to determine whether the findings all occurred as part of one single criminal event or multiple criminal events.

Dr. Soulé noted the following pros for option 2:

- Option 2 is consistent with the definition of juvenile adjudication used in the juvenile delinquency score study that created and validated the revised scoring system. That is, only one adjudication was scored per hearing regardless of the number of offenses with sustained facts at that hearing.
- Option 2 also follows the terminology used by the juvenile court (i.e., by referring to adjudication hearings, rather than referencing “criminal events”).
- It is simpler to identify hearings than it is to ascertain whether multiple findings of a delinquent act relate to a single criminal event or multiple criminal events. Dr. Soulé noted that this is the same argument listed as a con for option 1.

Dr. Soulé noted the following cons for option 2:

- Scoring multiple findings per hearing as a single finding may mask the severity of the juvenile record, particularly if separate criminal events are heard in a single hearing. Dr. Soulé noted that this was listed as a pro for option 1.

Dr. Soulé noted that the Guidelines Subcommittee discussed the aforementioned pros and cons for both options at their teleconference on June 28. Since Mr. Finci could not attend the present Commission meeting, Dr. Soulé relayed his comments. Dr. Soulé stated that Mr. Finci noted that the goal of the juvenile court is rehabilitation. As such, it is anticipated that, after an adjudicatory hearing, regardless of the number of offenses found with facts sustained at that hearing, the juvenile will be rehabilitated. Therefore, Mr. Finci expressed his support for option 2, as the juvenile score should allow for that period of rehabilitation to occur before counting another offense towards the juvenile record.



Dr. Soulé noted that, ultimately, the Guidelines Subcommittee was not able to reach a consensus and decided to bring forth the discussion to the full Commission without a specific recommendation.

Judge Avery expressed her view that a single criminal event should be guided by the case law that surrounds rule of lenity and merger issues. Judge Avery noted that criminal event is a “term of art” that is inextricably linked to those legal principles that apply in merger cases. For that reason, Judge Avery suggested that option 2 has the tendency to undercount criminal activity by juveniles. Judge Avery stated, though, that she agrees that option 2 is preferable. Judge Avery noted that she agrees with Mr. Finci in that, regardless of the number of offenses found fact sustained at a particular hearing, there is one disposition for the juvenile and, as result, one set of resources provided to the juvenile. Judge Avery noted that option 2 also minimizes the ways in which contrary definitions of a criminal event could compromise the research that went into developing the new juvenile delinquency scoring system. Finally, Judge Avery noted that regardless of whether a single or multiple hearings are held for two or ten carjackings, the maximum number of points an adult can score on the juvenile delinquency score is 2 points. Therefore, there is little difference between option 1 and option 2. Judge Avery urged the Commission to vote in favor of option 2.

Judge Harrell asked whether Ms. Martin (a member of the Guidelines Subcommittee who was not present at the current meeting) was in favor of option 1. Dr. Soulé confirmed that Ms. Martin was in favor of option 1. Judge Harrell asked whether the pros and cons of option 1 outlined on the presentation slide fully captured Ms. Martin’s rationale for favoring option 1. Dr. Soulé confirmed that the pros and cons outlined on the slide fully captured Ms. Martin’s reasoning.

Mr. DeLeonardo noted that he shared Ms. Martin’s concerns with option 2. Mr. DeLeonardo also noted, however, that the Commission had extensive discussions regarding the juvenile delinquency score as defined by “adjudications.” Mr. DeLeonardo noted that, in the example provided, the prosecutor would note to the judge if there were multiple carjackings versus a single carjacking, thereby providing the judge with the ability to consider that information in his or her sentencing decision. Mr. DeLeonardo also noted that, because adjudications were used in the definition of the juvenile delinquency score instructions, it would be appropriate to use the same language in this portion of the prior record instructions. Mr. DeLeonardo further noted that the adoption of option 2 may change the practice of grouping together multiple criminal events in one juvenile adjudicatory hearing.

Mr. DeLeonardo additionally noted that juveniles are different from adults. Mr. DeLeonardo stated that, if the Commission was referring to the adult court in these options, he would be arguing the other way. Mr. DeLeonardo stated that juvenile court, however, is much more about intervention than is adult court.





Senator Kelley made a motion to adopt option 2 and the revised language concerning the offender score instructions for scoring multiple prior convictions from a single criminal event. Mr. Davis seconded the motion.

**The Commission unanimously voted to adopt the revised language concerning the offender score instructions for scoring multiple prior convictions from a single criminal event.**

Following the vote to adopt the revised language, Judge Avery stated that she reached out to colleagues to discuss this particular issue. She found that there was disparity among jurisdictions and prosecutors in terms of how they charge juveniles with multiple offenses. Judge Avery noted that her colleague had a case with multiple carjackings. In this case, each carjacking was charged in a separate petition. There was a discussion about how this charging procedure would affect the youth as an adult in terms of his juvenile delinquency score. Judge Avery expressed that she was troubled by the disparity in charging practices.

Mr. DeLeonardo noted that the carjacking scenario described by Judge Avery differs from, for example, a juvenile charged with several car break-ins under one petition. Mr. DeLeonardo noted that the facts of cases may lead to different charging practices.

Judge Avery noted that the Commission concerns itself with fairness and uniformity in sentencing, therefore the inconsistency in charging practices is something to think about.

Judge Lewis noted that there is disparity in the thoughtfulness of prosecutors, judges, and defense attorneys, which contributes to disparity in charging practices. Judge Lewis additionally noted that juvenile court judges have varying levels of experience. Prosecutors have various levels of experience and supervision. Judge Lewis suggested that the disparity was something for the Maryland State's Attorney's Association to address.

Mr. DeLeonardo agreed that there is disparity in charging practices across State's Attorney's offices. Mr. DeLeonardo also noted, though, that prosecutors have less control over juvenile cases than they do adult cases, as DJS controls many aspects of the juvenile case.

## **5. Executive Director Report – Dr. David Soulé**

### **a. Release of updated version of the Maryland Sentencing Guidelines Manual (Status report)**

Dr. Soulé reported that the MSCCSP released a new version of the MSGM, Version 10.0, on July 1, 2018. MSGM 10.0 includes the revisions to the juvenile delinquency scoring component of the offender score. In addition to the juvenile delinquency score revisions, the new manual also includes updated sample cases throughout, an updated offense table,





and a revision to one of the victim information items in Chapter 11. Dr. Soulé noted that the updated offense table reflects minor edits and the addition of previously unclassified offenses that the Commission has since classified. The revision to the victim information item involves changing "Victim Non-participation" to "Victim Participation" following feedback from practitioners to phrase the item in the affirmative. The MSCCSP also produced an updated version (Version 1.9) of the paper sentencing guidelines worksheet to reflect the revised juvenile delinquency score instructions and the change to the language involving the victim participation question.

b. Update on the Maryland Automated Guidelines System (Status report)

Dr. Soulé reported that an updated version of the Maryland Automated Guidelines System (MAGS 7.0) was released on July 1, 2018. MAGS 7.0 includes updated instructions for the juvenile delinquency scoring component of the offender score to correspond with the revisions adopted July 1, 2018. The worksheet PDF that MAGS produces has also been revised to reflect this change. Dr. Soulé further noted that a "What's New in MAGS 7.0" document was distributed on Monday, July 2, 2018, to all MAGS users to describe these changes.

Since the Commission's last meeting in May, Dr. Soulé also reported that MAGS has since been deployed in Worcester County effective July 1, 2018, making it the 20<sup>th</sup> circuit court to deploy MAGS throughout the state. The next planned deployment for MAGS is Howard County on October 1, 2018.

c. Update on recent/upcoming feedback meetings and trainings (Status report)

Dr. Soulé reported that since the last MSCCSP meeting, he met with the judges in Prince George's County on May 16, 2018, to provide feedback on the sentencing guidelines in their jurisdiction. He advised that his goal is to meet with the judges in each jurisdiction every two to three years to provide feedback on data relative to their individual jurisdiction.

Additionally, Dr. Soulé noted that he presented on the Justice Reinvestment Act and the MSCCSP Study on Alternatives to Incarceration at the Judicial Conference on May 24, 2018. Judge Avery commended Dr. Soulé's presentation from the Judicial Conference and stated that the conference committee received a lot of positive feedback in response to the session.

Lastly, Dr. Soulé noted that on June 20, 2018, the training coordinator for the MSCCSP, Katharine Pembroke, provided a MAGS orientation session for practitioners in Worcester County as they began utilizing MAGS effective July 1, 2018.

Judge Lewis noted that there is a sizable number of jurisdictions who will be getting new State's Attorneys and stated that several offices may experience turnover as a result. She suggested that it would be helpful to identify and reach out to the new State's Attorneys to reiterate the importance of the guidelines. Dr. Soulé agreed.

Senator Kelley suggested that it might be helpful to hold a review session for the new attorneys. Mr. DeLeonardo advised that he will be giving a presentation to the new State's Attorneys following the general election and could certainly bring up the



sentencing guidelines at that time. He further noted that this is a topic that could be incorporated into such trainings in the future.

Judge Lewis suggested that the new State's Attorneys designate a point person to communicate with Dr. Soulé with regards to the guidelines. Mr. DeLeonardo stated that he will advise the new State's Attorneys that Dr. Soulé will be reaching out to them.

**6. Date, time, and location for remaining 2018 meetings**

Judge Harrell reminded Commissioners of the dates for the remaining 2018 meetings.

The remaining 2018 meetings will be held as follows:

September 17, 2018

December 11, 2018

**7. Old business**

None.

**8. New business and announcements**

None.

The meeting adjourned at 6:33 pm.