



Minutes

Maryland State Commission on Criminal Sentencing Policy

Videoconference

September 9, 2025

Commission Members in Attendance:

Honorable Dana M. Middleton, *Chair*

Honorable Melanie M. Shaw, *Vice-Chair*

Delegate J. Sandy Bartlett

Rodney R. Davis

Richard A. Finci, Esq.

Angelina Guarino, *representing Secretary Carolyn J. Scruggs*

Robert H. Harvey, Jr.

Brian D. Johnson, Ph.D.

Larry L. Johnson

Alethea P. Miller

Delegate David H. Moon

Agent Nakita S. Ross

Honorable Michelle R. Saunders

Staff Members in Attendance:

Julia Caspero

Stacy Najaka, Ph.D.

Anabella Nosel

Katharine Pembroke

David Soulé, Ph.D.

Visitors: None

1. Call to Order

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

3. Approval of Minutes

The minutes from the July 8, 2025, MSCCSP meeting were approved as submitted.



4. Announcement of Commissioner Reappointment

Dr. Soulé was pleased to share that Governor Moore reappointed Mr. Harvey as the Commission's State's Attorney representative. His appointment is for a term of four years, starting on July 1, 2025. Dr. Soulé thanked Mr. Harvey for his continued involvement with the MSCCSP. The Commission congratulated Mr. Harvey.

5. Guidelines Subcommittee Report – Judge Melanie Shaw and Judge Brian DeLeonardo

Judge Middleton announced the next item on the agenda, the Guidelines Subcommittee Report. She commended the Guidelines Subcommittee and the staff for their work on these topics. Judge Shaw, the Guidelines Subcommittee Co-Chair, noted that the staff will present the agenda items.

a. Proposed revisions to the guidelines instructions for psychological victim injury (Action item)

Ms. Caspero provided an introduction regarding agenda item 5a and directed the Commission to the corresponding meeting memo titled *Proposed Revisions to the Guidelines Instructions for Psychological Victim Injury*. She began with a brief recap of the prior discussions related to the topic. Psychological victim injury instructions were first brought to the attention of the Commission by two judges from the First Judicial Circuit who asked Dr. Soulé at a guidelines feedback meeting if the Commission would consider automatically assigning permanent victim injury points to sexual abuse of a minor. At its April 28th meeting, the Guidelines Subcommittee discussed the possibility of assigning permanent victim injury points to sexual abuse of a minor, as defined in Criminal Law Article (CR), § 3-602. Two guests were invited to share their perspectives on the issue, Mr. Michael Calabrese, Senior Assistant State's Attorney in Wicomico County, and Mr. Brian Shefferman, President-Elect of the Maryland Criminal Defense Attorneys' Association. The Subcommittee acknowledged the unique nature of injury to a victim of child sexual abuse; however, concerns were raised by the proposal to automatically assign permanent victim injury points to all child sex abuse cases. The Subcommittee decided to table the issue until reviewing additional information from staff. At its June 3rd and June 25th meetings, the Subcommittee reviewed staff's proposed language to revise the instructions for victim injury and offered edits. However, the Subcommittee expressed concerns about carving out a rule specific to sexual abuse of a minor when similar arguments could be made for victims of other types of abuse. Accordingly, the Subcommittee asked the staff to further research this issue and to provide an overview of how other jurisdictions address victim injury while also offering a broader definition of psychological victim injury that would apply to all offenses.

Ms. Caspero referred the Commission to pages two through four of the memorandum, which provide an overview of how other states score victim injury. Of the 17 jurisdictions



with sentencing guidelines, six, including Maryland, account for victim injury, these being: Alabama, Massachusetts, Michigan, Virginia, and the federal system. Alabama and the federal system only account for physical harm, while Virginia, Massachusetts, and Michigan include psychological harm in their definition of victim injury. Virginia's guidelines require proof of the victim receiving verifiable counseling from a licensed professional, and similar to Maryland's, expand this to include rape crisis hotlines, clergy, and school guidance counselors. Massachusetts incorporates psychological injury into three of its four injury categories, omitting it from its definition of permanent injury. Michigan most broadly defines victim injury, having separate scales for physical and psychological injury, and does not require verified professional treatment to score psychological injury.

Pages four and five of the memorandum show the proposed revisions to Maryland's victim injury definition, incorporating language from Michigan and the federal system's guidelines. They revise Part b of the Maryland Sentencing Guidelines Manual (MSGM) to read as follows: "The sentencing guidelines recognize that not all victims have access to psychological counseling or treatment. Victims may not have been provided treatment, and the psychological impact on certain victims, for example minors, may not manifest until later in life. Proof of psychological injury shall be based on (1) confirmed medical diagnosis or psychological counseling or treatment, or (2) other forms of reasonable proof. Rape crisis hotlines, clergy conferences, educational counseling, and other similar services are considered psychological counseling or treatment. Permanent psychological injury shall be based on proof of a substantial impairment likely to be of an extended or continuous duration."

The proposed changes to the Code of Maryland Regulations (COMAR) are on page five. There are also two appendices included in this memo. Appendix A, starting on page six, is a table of how all jurisdictions define victim injury, with links to their sentencing guidelines manuals. Appendix B, which starts on page 11, details the U.S. Sentencing Commission's policy statement on resolving disputed sentencing factors. This is included because some of the federal system's language is used in the proposed definition of victim injury for Maryland.

Ms. Caspero concluded her summary and said that the staff were happy to answer any questions the Commission had.

Judge Shaw credited Judge DeLeonardo with the broadening of the Subcommittee's perspective on revisions to the instructions for psychological injury to include all victims. She moved that the Commission vote in favor of the proposed revisions.

A motion was made and seconded to accept the Guidelines Subcommittee's proposed language.



Agent Ross asked whether the victim injury score would still be assessed when completing the worksheet for minors who may not have received psychological treatment.

Judge Shaw answered that the proposed language is a recognition that lack of access to treatment often occurs, but the score should still be considered. Sometimes a minor is within the care and custody of a parent or guardian who may not accept the validity of their complaint about abuse. Under those circumstances a minor would likely not have access to treatment, so it is a recognition that that may occur and that the court should still make some consideration.

Mr. Harvey added that this was the reason for subparagraph 2, to allow for other forms of reasonable proof.

Dr. Soulé noted that the proposed revisions were drafted to address the scenario where a victim does not have access to treatment. The proposed revisions allow for other forms of reasonable proof beyond medical treatment which may include testimony speaking about the impact of the injury on the victim.

The Commission voted unanimously to adopt the Guidelines Subcommittee's proposed revisions to the instructions for psychological victim injury.

b. Proposed revisions to the seriousness categories and guidelines instructions for subsequent violations of CR, §§ 4-204 and 4-306(b) (Action item)

Ms. Pembroke provided an introduction regarding agenda item 5b and began by referring Commissioners to the memo titled, *Proposed revisions to the seriousness categories and guidelines instructions for subsequent violations of CR, §§ 4-204 and 4-306(b)*. The Guidelines Subcommittee reviewed this issue at its June 3 and August 21 meetings. Initially, the staff presented to the Subcommittee the question as to whether the subsequent violation penalty for Criminal Law Article (CR), § 4-204, which prohibits the use of a firearm in the commission of a felony or crime of violence, should be used to calculate the guidelines for a defendant convicted of multiple contemporaneous violations of the statute and/or a prior conviction.

Ms. Pembroke explained how this is a question that staff have been receiving with increased frequency over the past several years based on case law issued by the Supreme Court of Maryland and the Appellate Court. Given the complexity of the issue, the Subcommittee requested that staff seek advice from the Office of the Attorney General (OAG).

The staff sent to the OAG four questions:



- One, when a criminal event involves multiple contemporaneous violations of CR, § 4-204, are all but the first violation defined as subsequent violations and subject to the penalty provided in CR, § 4-204(c)(2)?
- Two, when a sentencing event involves multiple violations of CR, § 4-204 that are part of separate criminal events (i.e., committed during the course of separate criminal transactions), are all but the first violation defined as subsequent violations and subject to the penalty provided in CR, § 4-204(c)(2)?
- Three, does the “subsequent violation” penalty apply to defendants with a prior conviction for CR, § 4-204, but only one instant violation?
- Four, do these rules apply to violations of CR, § 4-306, which prohibits the use of an assault weapon in a COV or any felony?

Ms. Pembroke said that the Commission’s assigned assistant attorney general, Mr. Stu Nathan, responded with a letter of advice on July 7, 2025. That letter was included with the meeting materials. Mr. Nathan answered each of the questions in the affirmative, referencing *Garner v. State*, the controlling case law issued by the Supreme Court of Maryland in 2015. In that case, the court held that the subsequent violation statute applied in a case where the defendant used a firearm to contemporaneously commit two crimes of violence against one victim. Mr. Nathan advised that “the reasoning in *Garner* applies to each of the Commission’s questions and that the enhanced penalty provisions in CR, § 4-204 for subsequent violations apply to both contemporaneous or prior violations of the prohibition against the use of a firearm in a COV or any felony.” Further, given the similar language in CR, §§ 4-204 and 4-306, *Garner* would also control the enhancement in CR, § 4-306.”

Given this advice, Ms. Pembroke explained that the Guideline Subcommittee recommends that the Commission take two actions. First, the Subcommittee recommends that the Commission revise the seriousness category classification for subsequent violations of CR, §§ 4-204 and 4-306. “First-time” violations of these statutes are currently classified as seriousness category III offenses, while subsequent violations are classified as seriousness category II offenses. Initially, subsequent violations were classified as one seriousness category higher than “first-time” violations largely to account for the mandatory consecutive sentence requirement for subsequent violations. Per CR, §§ 4-204 and 4-306, the sentence for a subsequent violation “shall be consecutive and not concurrent with any other sentence imposed for the [underlying] felony or COV.” However, the maximum penalties for first time and subsequent violations of these offenses are the same, that is 20 years. The Commission also recently revised the guidelines to otherwise account for the mandatory consecutive sentence rule that applies to subsequent violations of these statutes. Effective, February 1, 2024, the person completing the sentencing guidelines



worksheet shall add the upper limit of the guidelines range for a subsequent violation of CR, § 4-204 or § 4-306 to the upper limit of the guidelines range for the underlying crime of violence to obtain the upper limit of the overall guidelines range. Therefore, subsequent violations of these statutes are now treated differently than first time offenses, regardless of whether their seriousness categories differ.

Based on these reasons, the staff suggest that the seriousness category for both subsequent violations be reduced from a II to a III. This revision is proposed so these subsequent violations would not be “double enhanced” under the sentencing guidelines. Tables 3 and 4 on page five of the memo provide examples of how the guidelines would change if the seriousness categories were reduced. In this scenario, reducing the seriousness category for a subsequent violation of CR, § 4-204 would reduce the guidelines from 15Y-30Y to 5Y-20Y.

Second, the Subcommittee recommends that instructions pertaining to subsequent violations of these statutes be added to the Maryland Sentencing Guidelines Manual (MSGM) and COMAR. This proposed language begins on page six of the memo.

Judge Shaw noted that the Subcommittee has done its due diligence in terms of receiving an opinion from the Attorney General. She wanted to be clear that this relates to individuals who may engage in acts that are ultimately characterized as one criminal event, but multiple violations within that event. The Commission does not want to double-penalize individuals, particularly under one criminal event. Since there have been so many questions about this, the Subcommittee thought that it would be important to not only make the revisions but also provide additional information in the guidelines instructions.

Judge Middleton asked for a motion to adopt the recommendation of the Subcommittee for revisions to subsequent violations of CR, § 4-204 and § 4-306.

Delegate Bartlett asked how prior violations fit into this issue.

Judge Middleton gave an example using the facts of the case in *Garner*. A person was convicted of using a handgun in the commission of a crime of violence, robbery with a deadly weapon, but also shot the victim multiple times. This is an example of a contemporaneous violation. However, the same individual convicted of prior robbery with a deadly weapon using a firearm would be an example of a prior because they likely would have been convicted of using a handgun in the commission of a crime of violence.

Delegate Bartlett clarified that her question was more around how a prior offense would be scored.

Judge Middleton pointed to a similar example in Table 4 on page five of the memorandum. The individual has a first offense of use of a firearm in the commission



of a crime of violence and the seriousness category is a II. The Subcommittee recommends that the seriousness category be reduced to a III, because otherwise the individual would be penalized twice. The penalty provision of the statute already requires the individual to serve a consecutive sentence, but if the seriousness category remained a II, the defendant would have an enhanced penalty and a consecutive sentence.

Dr. Soulé added that this statute requires the sentence to be served consecutively. The Commission recently changed the sentencing guidelines rules to indicate that when a statute requires the sentence to be served consecutively, the upper limit of the guidelines are stacked. There are approximately ten statutes in the Maryland code that require the sentence to be served consecutively, and CR, § 4-204 or § 4-306 are two of them. *Garner* says that when there are multiple handgun violations in a crime of violence within the same sentencing event, the second contemporaneous offense has to be scored as a subsequent violation, so they would be stacked within the same sentencing event. If it is a true prior, an offender has a prior crime of violence and gets sentenced again for another violation. How the guidelines are treating that second violation does not come into play since the offenses are not being stacked within the individual event.

A motion was made and seconded to accept the recommendations of the Guidelines Subcommittee. **The Commission voted unanimously to reduce the seriousness category for subsequent violations of CR, § 4-204 and § 4-306 from a II to a III, and to add the instructions pertaining to subsequent violations of these statutes to the MSGM and COMAR.**

c. Proposal to study potential revisions to the scoring of physical injury (Action item)

Dr. Soulé presented the last item of the Guidelines Subcommittee Report.

He started by explaining that when the Guidelines Subcommittee completed its review of psychological victim injury during its August 21 meeting, the Subcommittee noted as a next step that the Commission should revisit the sentencing guidelines scoring instructions regarding physical injury. In that meeting, Mr. Finci noted that from his point of view, the sentencing guidelines instructions regarding physical injury are vague and may not be particularly helpful or useful. Specifically, Mr. Finci referenced the guidelines instructions that indicate injury must be “more than minimal” and suggested it may be helpful to provide clarifying language and offer a definition of what constitutes permanent physical injury other than death.

Dr. Soulé stated that the Guidelines Subcommittee members agreed that the language should be reviewed and asked that the Commission assign this topic back to the Subcommittee to review in more detail.



Judge Shaw asked Mr. Finci to provide some comments with respect to the background of this issue.

Mr. Finci said that from his experience, the court has difficulty determining what is more than minimal injury, what is no injury and what is to be scored as permanent injury. He gave an example of a bruise compared to a broken arm to show that there is ambiguity in what constitutes more than minimal injury. As the Subcommittee looked at psychological injury, it seemed to be a good time to bring up establishing better definitions for physical injury and improve this part of the guidelines.

Judge Shaw asked the Commission for approval to examine the issue.

Judge Middleton asked if this would pertain to any particular offense or in general. She noted that it can be difficult to determine what is a serious or protracted disfigurement in a first degree assault.

Judge Shaw clarified that this would be in general, and the Subcommittee plans to look at how other jurisdictions score physical injury.

A motion was made and seconded to accept the recommendations of the Guidelines Subcommittee. **The Commission voted unanimously for the proposal to examine the instructions for scoring physical victim injury.**

6. Executive Director Report – Dr. David Soulé

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

a. MAGS 13.0 new features deployed (Status report)

Dr. Soulé said that the MSCCSP released new features in version 13.0 of the Maryland Automated Guidelines Systems (MAGS) on August 26, 2025. These new updates include an improved display of the Offense/Offender Score screen and a new alert message notifying the guidelines worksheet's preparer of missing home detention information. A more detailed description of these new features is provided in the *What's New in MAGS* document that was distributed to all MAGS users.

b. Forthcoming November 3, 2025, guidelines amendments (Status report)

Next, Dr. Soulé noted that proposed COMAR amendments were published in the August 22, 2025, edition of the Maryland register. The proposed amendments modify Regulation .12 under COMAR 14.22.01 General Regulations to in response to Senate Bill 152/House Bill 89 (2025), which provides that each animal harmed in violation of Criminal Law Article, Title 10, Subtitle 6, Annotated Code of Maryland, shall be considered a victim for the purposes of applying the multiple victims stacking rule. Additionally, the proposed amendments modify Regulation.02 under



COMAR 14.22.02 Criminal Offenses and Seriousness Categories to reflect new and revised penalties from the 2025 Legislative Session, and minor edits to the table, including the addition of new CJIS Codes for several existing offenses. These proposed amendments are expected to be adopted effective November 3, 2025.

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

Next, Dr. Soulé indicated that the MSCCSP training coordinator, Ms. Pembroke, will host multiple training webinars in September. On September 10th and 19th, 2025, she will lead an orientation and training for judicial law clerks and other judicial staff. Additionally, on September 12, 2025, the MSCCSP will offer a sentencing guidelines “refresher” and MAGS 101 webinar for all justice partners, including prosecutors, defense attorneys, and P&P agents who initiate sentencing guidelines worksheets.

Dr. Soulé shared that he recently met with circuit court judges in Montgomery County, Prince George’s County, Washington County, and the Second Judicial Circuit for judiciary feedback meetings. He is also meeting with Judge DeLeonardo and his colleagues in Carroll County in October. His goal is to meet with each jurisdiction every two to three years. The meetings are an opportunity to share sentencing guidelines, discuss recent guidelines updates, review the work of the Commission, and finally to solicit feedback from the Judiciary regarding the sentencing guidelines and the work of the MSCCSP.

d. Review of protocol for the December 2, 2025, public comments hearing (Status Report)

Lastly, Dr. Soulé explained that the MSCCSP enabling legislation requires that the Commission hold an annual public comments hearing. The hearing is important as it provides a forum for the public to discuss sentencing-related issues. The MSCCSP’s 2025 public comments hearing is scheduled for December 2, 2025, at 5:00pm, and will be followed by a regular business meeting.

He said that next month a hearing invitation will be distributed to approximately 35 key criminal justice stakeholders throughout the State. Further, the invitation will be distributed to the roughly 1,000 criminal justice practitioners currently receiving the MSCCSP’s electronic newsletter, *Guidelines E-News*. The intention is to allow an option for those who are interested in speaking to do so virtually.

Dr. Soulé encouraged Commissioners to identify thoughtful speakers who can directly speak to the sentencing issues that are within the scope of the Commission. Interested speakers can contact him if they have questions about the public comments hearing.



Dr. Soulé concluded his report and said he was happy to answer any questions.

Judge Shaw indicated that this year there are several new judges in Prince George's County. She asked if newly appointed judges receive guidelines training during their orientation.

Dr. Soulé said that Judge Shaw asked a great question as the training has changed. He said that in the past, the MSCCSP provided sentencing guidelines training during the new judge orientation, however the new judge orientation has changed in the last two years. Instead, the Judiciary provides an overview of the sentencing guidelines and the MSCCSP individually reaches out to new judges to provide them with basic information on the guidelines, where to find recordings of the training, and contact information if they have questions. However, there is no longer an official sentencing guidelines training as part of the new judge orientation. Dr. Soulé noted he would be amenable to participating in it again, but that decision was made by the Judiciary.

Judge Shaw said that Judge Middleton may be best equipped to answer her question given her involvement with the Judicial Education Committee. Judge Shaw said that since the staff are leading so many online training sessions, there may be an opportunity to request the MSCCSP's participation in the orientation. She noted that the MSCCSP provides training to new law clerks, but there is no training for judges.

Judge Middleton stated that the Judiciary started Criminal Law University last year, which is a program directed towards new trial court judges. She said she will make the suggestion to have a guidelines-specific training for judges. Judge Shaw thanked Judge Middleton.

Judge Shaw also asked Dr. Soulé to follow up with the judges and the state's attorney from the First Judicial Circuit who brought up the issue of the definition of psychological injury to the Commission's intention. She asked that they be informed on the decision the Commission made today based on their concerns and that if they have future concerns, to feel comfortable bringing them to the MSCCSP. Dr. Soulé said she made an excellent point and said he would follow up with them. Judge Shaw thanked Dr. Soulé.

7. Remaining 2025 MSCCSP Meetings (Status report)

The remaining MSCCSP meetings were noted in the agenda:

- December 2, 2025, public comments hearing, 5:00 pm (In-Person, Maryland Judicial Center)
- December 2, 2025, business meeting, starts 10 minutes after conclusion of the public hearing (In-Person, Maryland Judicial Center)

8. Old Business

There was no old business to discuss.



9. New Business/Announcements

Judge Middleton asked if there was any other new business to discuss. Hearing none, she thanked Commissioners for their time. Judge Middleton also thanked Commissioners and the Guidelines Subcommittee for their work during the meeting.

The meeting was adjourned at 6:17 p.m.