



Minutes

Maryland State Commission on Criminal Sentencing Policy

Videoconference

September 10, 2024

Commission Members in Attendance:

Honorable Dana M. Middleton, *Chair*

Honorable Melanie M. Shaw, *Vice-Chair*

Delegate J. Sandy Bartlett

Honorable Brian L. DeLeonardo

Katie Dorian, *representing Honorable Anthony G. Brown*

Richard A. Finci, Esq.

Angelina Guarino, *representing Secretary Carolyn J. Scruggs*

Robert H. Harvey, Jr.

Brian D. Johnson, Ph.D.

Larry Johnson

Alethea P. Miller

Delegate David Moon

Honorable Michelle R. Saunders

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

Staff Members in Attendance:

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 July 9, 2024, MSCCSP meeting were approved as submitted.



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

Judge Middleton announced the next item on the agenda, the Guidelines Subcommittee Report. Judge Shaw, Guidelines Subcommittee Co-Chair, turned the discussion over to the MSCCSP staff to present the report.

Dr. Soulé thanked Judge Shaw. He said the Guidelines Subcommittee met via video conference on August 29, 2024, and will be reporting on three items, beginning with agenda item 4a, the continued review of list of common sentencing guidelines departure reasons. He stated that the staff Research Director, Dr. Stacy Najaka, would present the first item.

a. Continued review of list of common sentencing guidelines departure reasons (Action item)

Dr. Najaka referred the Commission to the corresponding meeting memorandum, *Updating List of Common Departure Reasons*. She noted that most of the information in the memorandum was presented during the Commission's last meeting on July 9. At that time, Commissioners reviewed proposed revisions to the list of common departure reasons. The proposed revisions were guided by a survey of Maryland circuit court judges and existing data on sentencing guidelines departures.

Dr. Najaka noted that during the July 9 meeting, concern was raised over the proposed removal of the mitigating reason "Offender had diminished capability for judgement." Specifically, it was noted that removal of this reason may make it more difficult for judges to report downward departures due to the defendant's past or present intellectual or mental health concerns. In response, the Commission voted to send the issue back to the Guidelines Subcommittee for further consideration.

Dr. Najaka stated that the Subcommittee reviewed the issue during its August 29 meeting and agreed to recommend the removal of the reason "Offender had diminished capability for judgement", and in its place, the addition of the reason "Offender is or was suffering from a mental or physical condition that reduces culpability for the offense." The phrasing draws from a similar departure reason in Massachusetts and addresses the concern raised in the July 9 meeting. She referred the Commission to pages 3 through 5 of the memorandum to view the proposed revision and those previously reviewed.

Dr. Najaka concluded her summary by noting that the Guidelines Subcommittee unanimously recommends adoption of the proposed updates to the list of common departure reasons and the corresponding instructions.

Judge Shaw noted that the proposed revision took inspiration from the Massachusetts list of departure reasons, which included the phrase "significantly reduced." She said the Subcommittee's rationale to remove "significantly" was to give a judge the discretion to



determine whether a defendant's mental or physical injury was a noteworthy reason for departure.

Delegate Bartlett asked the Subcommittee if judges would be determining the capacity of the defendant at the time when the crime was committed. Judge DeLeonardo answered yes.

Delegate Bartlett expressed concern that there could be a situation where the defendant suffered from a physical or mental ailment after the crime was committed. She asked if this scenario had been discussed in the Subcommittee meeting and what their rationale was.

Judge DeLeonardo confirmed that this scenario was discussed at the Subcommittee meeting. He noted there are two departure reasons listed that can capture this. He said departure reason three ("Offender is or was suffering from a mental or physical condition that reduces culpability for the offense") can be used to reference the defendant's culpability at the time of the offense. Departure reason four ("Offender's age/health") could be used to consider the defendant's culpability at the time of sentencing. He said that there may be a situation where both apply, or one or the other.

Judge DeLeonardo provided an example case he presided over involving a defendant making pipe bombs. He said that a pipe bomb exploded, and the defendant was seriously injured as a result. While the defendant did not have significant health issues at the time of the offense, his current condition was a factor taken into consideration at sentencing.

Delegate Bartlett thanked Judge DeLeonardo for providing clarification and said his reasoning made sense. Judge Middleton asked if there was any further discussion.

Dr. Soulé thanked Mr. Zaremba for meeting with the staff to work on the proposal to address the concerns that were raised at the July 9 Commission meeting.

A motion was made and seconded. **The Commission adopted the Guidelines Subcommittee's recommendation to adopt the revised list of common sentencing guidelines departure reasons with no opposition.**

b. Review of offenses involving threats to public officials (Action item)

Dr. Soulé presented agenda item 4b, the review of offenses involving threats to public officials. He referred Commissioners to the memorandum titled, *Review of Offenses Involving Public Officials*.

Dr. Soulé noted that the Subcommittee, at its June meeting, recommended that staff review offenses involving public officials. This was after the Subcommittee recommended a seriousness category V for the offense of *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. At that time, the Subcommittee expressed concern that a similar offense, *Threaten to take the life, kidnap, or cause physical injury to State or local official, deputy or assistant State's Attorney or Public Defender*, was classified as a seriousness category VI person offense.

Dr. Soulé explained that the staff presented a review of offenses involving public officials to the Guidelines Subcommittee at its August 29 meeting. Based on the review, the Guidelines Subcommittee recommends that the Commission take two actions.

Dr. Soulé said that, first, the Subcommittee recommends that the Commission reclassify *Threaten to take the life, kidnap, or cause physical injury to State or local official, deputy or assistant State's Attorney or Public Defender* from a seriousness category VI to a seriousness category V person offense. The reclassification would not change the guidelines for the offense, as seriousness category V, VI, and VII offenses receive the same score on the offense score. However, it could impact the calculation of an individual's prior adult criminal record. It also recognizes the serious nature of the offense and places it in a seriousness category with comparable offenses, like *Assault, 2nd degree*. He referred Commissioners to page 3 of the memorandum which provides a summary of the recommended reclassification and a list of comparable offenses.

Second, Dr. Soulé stated the Guidelines Subcommittee recommends that the Commission classify one previously unclassified offense involving public officials, which is a violation of Election Law Article (EL), § 16-205. EL, § 16-205 prohibits a person from interfering with an election official in the performance of their official duties or interfering with an individual lawfully present at a polling place or at a canvass of votes. A person who violates this law is guilty of a misdemeanor with a maximum punishment of 1 year incarceration, a \$50-\$100 fine, or both. The Subcommittee recommends that this offense be dually classified as a seriousness category V person offense and a seriousness category VI property offense. The State's Attorney or the Parole and Probation agent initiating the worksheet would have the discretion to classify it as a person or property offense based on the specific facts of the case. The dual classification recognizes that the act underlying this offense could be person or property related.

Dr. Soulé explained that the seriousness category V person offense was selected based on the classification of comparable offenses, such as *Threatening an election official or their immediate family member*. The seriousness category VI property offense was selected based on comparable property offenses and because the recommended guidelines ranges for these offenses are comparable to those for seriousness category V person offenses. He referred Commissioners to page 4 of the memorandum which illustrates what the guidelines ranges for this offense would be as a person versus property offense.

Dr. Soulé noted that other "dual" or multiple offense-type category classifications exist in the sentencing guidelines offense table. For example, *Accessory after the fact to a felony* is listed for drug, person, and property offenses. The person completing the guidelines



must select the corresponding offense type. Pages 5 through 6 of the memorandum provide a summary of the proposed classification and a list of comparable offenses.

Judge Shaw said, in reference to Mr. Finci's reasoning on the Subcommittee's recommendation, that the Subcommittee thought it was important to provide consistency because of the current environment and culture. She said that these offenses should be taken seriously, even though the recommended classifications do not impact the sentencing guidelines ranges.

Mr. Harvey added that the offense is important and for the sake of consistency, if a similar offense has a seriousness category V, *Threaten to take the life, kidnap, or cause physical injury to State or local official, deputy or assistant State's Attorney or Public Defender* should also be a category V.

Judge Middleton asked if there were any questions about the recommendation regarding dual classification of *Interference with performance of official duties by election official, an individual present*.

Judge Shaw explained that the Subcommittee had a long discussion on the offense type and came to the decision that it could be both a person and property offense. In an abundance of caution, the Subcommittee recommended a dual classification to cover all potential scenarios.

A motion was made and seconded. **The Commission adopted the Guidelines Subcommittee's recommendation to reclassify *Threaten to take the life, kidnap, or cause physical injury to State or local official, deputy or assistant State's Attorney or Public Defender* from a seriousness category VI to a seriousness category V person offense, and to dually classify *Interference with performance of official duties by election official, an individual present* as a category V person offense and category VI property offense.**

c. Review of commit a crime of violence in the presence of a minor (Status report)

Dr. Soulé stated that Research Assistant, Anabella Nosel, would present the final item from the Guidelines Subcommittee Report, the review of *Commit a crime of violence (COV) in the presence of a minor*.

Ms. Nosel referred Commissioners to the corresponding meeting memorandum of *Commit a COV in the Presence of a Minor*. She said this item is a status update only, as the Guidelines Subcommittee does not recommend that the Commission take any action.

Ms. Nosel explained the Commission agreed to review the classification of *Commit a COV in the presence of a minor* at its July 9, 2024, meeting. This was after the Subcommittee recommended a seriousness category V for the offense of *Indecent exposure when person knows or should know that a minor is present*. *Commit a COV in the presence of a minor* was listed as a comparable offense for *Indecent exposure when*



person knows or should know that a minor is present, and Delegate Bartlett expressed concern that it was the only comparable classified as a seriousness category VI.

Ms. Nosel noted that the MSCCSP staff presented a review of this offense to the Guidelines Subcommittee at its August 29 meeting. The review included characteristics of the offense, sentencing guidelines compliance rates, and average sentences for this and comparable offenses. The analyses are provided on pages 3 through 5 of the memorandum. The MSCCSP received worksheets for only 41 sentencing events involving *Commit a COV in the presence of a minor* since the law went into effect in 2014.

Ms. Nosel stated that the Subcommittee does not recommend that the Commission act with respect to reclassification for two reasons. First, the sentencing guidelines compliance rate for this offense was relatively high at 83%. Second, by definition, the offense is always convicted with an underlying COV. Per Criminal Law Article (CR), § 3-601.1, the sentence for this offense shall be served consecutive to that of the underlying crime of violence. Additionally, pursuant to the Commission's recently adopted mandatory consecutive sentence offense rule, the upper limit of the guidelines range for an offense that is statutorily required to be served consecutive to that of another offense shall be added to the upper limit of the guidelines range for its underlying offense. Therefore, the overall guidelines range for a sentencing event involving *Commit a COV in the presence of a minor* is already enhanced. Reclassifying the offense would have no impact on the recommended guidelines range or the calculation of an individual's prior adult criminal record score.

Dr. Soulé thanked Ms. Nosel for her presentation and elaborated on the difference between *Commit a COV in the presence of a minor* and the recent decision to reclassify *Threaten to take the life, kidnap, or cause physical injury to State or local official, deputy or assistant State's Attorney or Public Defender* as a seriousness category V offense. He noted that since *Commit a COV in the presence of a minor* is sentenced in addition to an underlying COV in the same criminal event, reclassifying it would have no effect on the calculation of the individual's prior adult criminal record. This is because only the most serious offense per criminal event is counted towards the prior record score; and no COV is classified as less than a seriousness category V offense. Dr. Soulé noted another uniqueness of this offense is that it is statutorily required to be consecutively sentenced to the underlying COV, so the guidelines are already enhanced. For these reasons the Guidelines Subcommittee believed reclassification would have no impact on the guidelines.

Judge Middleton thanked Dr. Soulé, noting that this item was presented for information purposes only. She said she understood the Guidelines Subcommittee's rationale for taking no action on this item.

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.

a. Introduction of Julia Caspero, new Policy Analyst/Graduate Research Assistant (Status report)

Dr. Soulé was pleased to introduce the new MSCCSP staff Policy Analyst, Julia Caspero. Ms. Caspero is a graduate student in the Department of Criminology and Criminal Justice, and could not attend the September 10, 2024, Commission meeting due to class schedule conflicts. She replaces Lydia Becker, who could also not attend the September 10, 2024, meeting, but Dr. Soulé recognized and thanked Lydia for her work on the MSCCSP over the last year. Ms. Becker was awarded a federal fellowship that allows her to focus solely on her doctoral research. Dr. Soulé expressed enthusiasm for Ms. Caspero's addition to the team and is looking forward to introducing her in person to the rest of the Commission at the December 3, 2024, meeting.

b. Forthcoming November 1, 2024, guidelines amendments (Status report)

Dr. Soulé stated that there are pending updates to the guidelines in the Code of Maryland Regulations (COMAR), published on August 23, 2024, that will be adopted effective November 1, 2024. The amendments modify regulations .12 and .14 under COMAR 14.22.01, specifying how the mandatory consecutive sentences offense rule works in combination with two or more seriousness category I or II offenses and the multiple victims "stacking" rule. Additionally, the amendments modify the offense table to reflect new and revised offenses from the 2024 legislative session that were discussed and voted on in the July 9, 2024, meeting. There was also one previously unclassified offense that the Commission classified, and the seriousness category was revised for two other offenses. Those proposed amendments are expected to be adopted on November 1, 2024.

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

Dr. Soulé recognized the work of Katharine Pembroke as the MSCCSP training coordinator. Ms. Pembroke is hosting multiple upcoming training sessions, including a MAGS 101 webinar on September 11 and 20 for all justice partners, including defense attorneys, prosecutors, and Parole and Probation agents initiating sentencing guidelines. On September 13 and 25, Ms. Pembroke will be providing an orientation for judicial law clerks and other judicial staff on the role courts play in providing sentencing information for MAGS.



Dr. Soulé has also scheduled sentencing guidelines feedback meetings with all judges in the First and Second Judicial Circuits to be completed in the last week in September. Additional meetings are being scheduled in Allegany and Washington Counties in the coming months. Dr. Soulé’s goal is to meet with each jurisdiction every two to three years, and he tries to meet with the full bench whenever possible. This is a good opportunity to share data specific to individual jurisdictions and to make them aware of any updates or changes to the sentencing guidelines and highlight the work the MSCCSP is doing.

d. Review of protocol for the December 3, 2024, public comments hearing (Status report)

The fourth item Dr. Soulé introduced was the protocol for the December 3, 2024, meeting to review for the new Commissioners who may not have been involved with the public comments hearings in the past. The December 3, 2024, Commission meeting will start with a public comments hearing, followed by the regular business meeting. The schedule is adjusted slightly, starting at 5:00 p.m., to have time for the public comments hearing. There will be a brief break for dinner and the Commission will continue with the regular business meeting. Starting next month, the MSCCSP will distribute information to key criminal justice stakeholders statewide to make them aware of the hearing and ask them to distribute it among their groups. Dr. Soulé asked Commissioners to think of any appropriate speakers who would be good candidates to speak at the public comments hearing. Anyone interested may contact Dr. Soulé if they want to speak to any sentencing policies that fall within the scope of the Commission’s work.

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

Dr. Soulé then provided an updated plan for the commemorative booklet marking the 25-year anniversary of the MSCCSP. In the coming weeks, Commission staff will be reaching out to a few current and former Commissioners to solicit comments to include in the booklet. The staff’s goal is to complete the booklet in advance of the December 3, 2024, public comments hearing, to make printed copies available for all Commissioners, and to distribute it among the MSCCSP listserv.

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

The final item Dr. Soulé presented was a status update on the Maryland Equitable Justice Collaborative (MEJC), specifically the Criminal Law and Sentencing Reform Committee that Dr. Soulé participates in. As noted during the July 9, 2024, meeting, the 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) with the goal of reducing mass incarceration of marginalized groups in Maryland prisons and jails.

MEJC aims 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”), which is co-chaired by Katie Dorian, Judge Alexander Williams, and Sean Mukherjee. The Committee began meeting biweekly in December 2023. The MEJC leadership reviewed multiple proposed ideas and directed the Committee to act on three priority items which are as 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. The MSCCSP staff helped the Committee with the first proposal and highlighted some of their own findings and research done in the July 2023 report titled, *An Assessment of Racial Differences in Maryland Guidelines-Eligible Sentencing Events*. The MEJC expects the proposals will result in proposed legislative actions during the 2025 session. Dr. Soulé will continue to provide updates to the MSCCSP regarding notable developments that come out of the Committee.

Judge Shaw also serves on the MEJC in a different work group to look at court involvement and helping individuals get released. She gave a presentation on reentry court and second chance legislation. While there is a lot of work being done by the workgroups, Judge Shaw expressed that the January deadline for proposals was overly ambitious. Ms. Dorian added that the MEJC has a report due at the end of the year and a collaborative meeting on October 15, 2024, where the collaborative body will vote on each committee’s recommendations to include in the report. Several proposals that do not make it into the report will continue to be ongoing, as the MEJC is meant to be more long-term.



6. Remaining 2024 MSCCSP Meetings (Status report)

The remaining MSCCSP meetings were noted in the agenda:

- Tuesday, December 3, 2024, public comments hearing (in-person, Maryland Judicial Center).
- Tuesday, December 3, 2024, business meeting (in-person, Maryland Judicial Center).

7. Old Business/New Business/Announcements

Mr. Harvey asked if there were any State's Attorneys represented in the MEJC. Ms. Dorian answered that Karen Piper Mitchell (Deputy State's Attorney, Charles County) was nominated by the Maryland States Attorney's Office to represent the collaborative MEJC. Individual committees also have prosecutors, but Ms. Dorian could not say for certain whether each of the seven workgroups included a prosecutor. She encouraged anyone interested in participating to join the MEJC.

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