



Minutes

Maryland State Commission on Criminal Sentencing Policy
Videoconference
September 15, 2020

Commission Members in Attendance:

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

Staff Members in Attendance:

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

1. Call to order

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

2. Roll call and declaration of quorum

The meeting began at 5:36 pm when attendance reached a quorum.

3. Approval of minutes from July 7, 2020 MSCCSP meeting

The Commission approved the minutes as submitted.

4. Guidelines Subcommittee Report – Judge Shannon Avery and Dr. David Soulé

Judge Avery stated that the Guidelines Subcommittee met via videoconference on August 31, 2020. The Subcommittee reviewed two issues—the definition of a vulnerable victim under part D of the offense score and the ongoing issue relating to American Bar Association (ABA) pleas. Judge Avery deferred to Dr. Soulé for a summary of the Subcommittee's discussion.



a. Review of the Definition of a Vulnerable Victim Under Part D of the Offense Score (Action item)

Dr. Soulé stated that the first item on the Guidelines Subcommittee report is the review of the definition of a vulnerable victim under Part D of the offense score. Dr. Soulé noted that the staff asked the Subcommittee to review this issue because of increasing questions about special victim vulnerability particularly with respect to whether someone who is intoxicated, under the influence of drugs or alcohol, or pregnant should be considered a vulnerable victim. Most recently, the MSCCSP received an inquiry as to whether an incident involving a sleeping victim should be scored to reflect a vulnerable victim.

Dr. Soulé stated that under Maryland’s sentencing guidelines, the offense score is calculated as the sum of points assigned to four elements: (1) the seriousness category of the convicted offense; (2) victim injury; (3) weapon presence; and (4) special victim vulnerability. With regard to the last component, the Maryland Sentencing Guidelines Manual (MSGM) instructs that a score of 1 shall be assigned if the victim is a vulnerable victim, which is defined as anyone younger than 11 years old, 65 years or older, or having a temporary or permanent physical or mental handicap, including an individual who is physically or mentally limited in a material way.

Dr. Soulé indicated that in fiscal year 2019, 9.9% of person offense convictions were awarded one point for special victim vulnerability. To provide further insight into cases that may involve a victim vulnerability, the staff also looked at the reasons cited for departure. As noted in footnote 1 of the memo, “special circumstances of the victim” was cited as a reason for an above departure in an approximately 10 percent of above the guidelines sentences in FY 2019.

Dr. Soulé noted that the sentencing guidelines worksheet also allows judges to provide other reasons for departure. In reviewing the entire MSCCSP database, 13 sentencing events, with sentence dates ranging from 2000 to 2019, included a written “other” reason for departure that cited a victim who was pregnant (5 events), intoxicated (5 events), or sleeping (3 events). Part D of the offense score (special victim vulnerability) was recorded as zero points in each of these 13 sentencing events.

Dr. Soulé stated that in September 2018, the MSCCSP staff received a memo from the Howard County Domestic Violence Fatality Review Team (HCDVFRT), a unit in the State’s Attorney’s Office. In the memo, the HCDVFRT argues that pregnancy should be included in the definition of special victim vulnerability. The SAO had initially planned to present this issue at the 2018 public comments hearing, but ultimately declined to present the issue for unknown reasons.

In addition, more recently, an assistant state’s attorney from another jurisdiction brought to the staff’s attention that pregnancy may qualify an individual for short-term disability leave. The ASA argued that, because the guidelines definition of special victim vulnerability includes a temporary handicap, and because pregnancy may be considered a



disability for disability insurance purposes, a person offense involving a pregnant victim should receive one point for special victim vulnerability.

Dr. Soulé noted that the corresponding memo provides a summary of the definition of vulnerable victim from the Federal and other state sentencing guidelines. The sentencing guidelines in eight states (including Maryland), the District of Columbia, and the Federal system make reference to victim vulnerability. Age and reduced physical or mental capacity or disability are included in each jurisdiction's reference to vulnerability. Pregnancy is referenced in the definition of victim vulnerability in the Federal system (though only for certain drug offenses) and Michigan. Intoxication, sleep, and unconsciousness are referenced in the definition of victim vulnerability in one jurisdiction (Michigan). Seven of the states noted in the memo list victim vulnerability as an aggravating factor that justifies a departure from the guidelines.

Dr. Soulé stated that the Guidelines Subcommittee reviewed the victim vulnerability issue at its August 31, 2020, meeting. Dr. Soulé highlighted several discussion points from the meeting. First, the Subcommittee noted that the increased frequency of sex offenses perpetrated against women by friends, coaches, and family members suggest that the guidelines should be updated to reflect victim vulnerabilities beyond age and disability.

Second, the Subcommittee questioned if the stage of pregnancy should factor into victim vulnerability and, relatedly, if the defendant knew about the pregnancy or a specific vulnerability. Dr. Soulé noted that the Subcommittee generally agreed that the guidelines should not attempt to differentiate between various states of pregnancy. Instead, the Subcommittee agreed that the "knew or reasonably should have known" standard would apply to all victim vulnerabilities.

Third, the Subcommittee noted that some of the sentencing guidelines in jurisdictions outside of Maryland do not include factors that are an element of the offense. As such, Mr. Finci expressed concern with the "double-counting" of victim vulnerabilities and noted that "double-counting" is an issue in other aspects of Maryland's sentencing guidelines (e.g., weapon presence). The counter argument was that victim vulnerability points are not double-counting, rather they provide guidance as to the range of sentencing, as opposed to determining elements of the offense. It was noted that many current vulnerabilities are elements of an offense (e.g., age). Judges often consider at sentencing factors that are both elements of the offense and mitigating or aggravating factors.

Finally, Senator Kelley suggested that given that unconsciousness is an obvious vulnerability, it should be included in a list of conditions that meet the standard for scoring a point for victim vulnerability.

At the conclusion of the discussion, the Guidelines Subcommittee generally agreed that it would be helpful to list in the MSGM specific conditions that constitute "victim



vulnerability” and agreed to recommend the following proposed revision to the MSGM Chapter 6, Section 6.1.D.c.:

A vulnerable victim is anyone... c. Having a temporary or permanent physical or mental [handicap] **disability**, including an individual who is physically or mentally limited in a material way. **Examples of a temporary physical or mental limitation include, but are not limited to, instances when the offender knew or should have known the victim was pregnant, unconscious, asleep, and/or intoxicated.**

Dr. Soulé noted that the Subcommittee recommended to replace the word “handicap” with “disability” in first section of the proposed revision to be consistent with recommended language from the Americans with Disabilities Act. The Subcommittee asked that Dr. Soulé present this proposed revision at the full Commission meeting as the recommendation of the Guidelines Subcommittee, while noting that Mr. Finci expressed some reservations to the proposed revisions.

Dr. Soulé opened the discussion to the full Commission. Mr. Davis expressed concern with the inclusion of sleep in the definition of victim vulnerability. Mr. Davis stated that he did not view a state of sleep as being limited in a material way or as a physical or mental disability. Mr. Davis understood why unconsciousness and intoxication would be included in a list of victim vulnerabilities, but suggested that sleep would not fall in the same category. Mr. Davis proposed that the Commission exclude sleep from the definition of a vulnerable victim.

Senator Kelley noted that while the MSGM uses the term “disability,” the Guidelines Subcommittee, in contemplating the definition of vulnerable victim, was thinking of conditions that make a victim more vulnerable to an offense than they would be were the condition not present. Senator Kelley stated that a sleeping victim would be vulnerable to physical or psychological abuse because they are not able to defend themselves. Additionally, a sleeping victim may not know who perpetrated the offense against them.

Mr. Finci stated that his concern is that the change in definition of vulnerable victim would be a prescriptive provision, while the guidelines were designed to be primarily descriptive. Mr. Finci noted that judges have not expressed to the Commission that they sentence defendants more harshly when these vulnerabilities are present versus not present.

Delegate Moon stated that the proposed inclusion of pregnancy in the definition of vulnerable victim jumped out at him, primarily because it came by request of a unit in the Howard County State’s Attorney’s Office. Delegate Moon noted that, over the past several years, the legislature has debated legislation surrounding similar issues related to pregnancy. The debate over legislation stemmed from a case in Howard County in which a pregnant woman was murdered and the family sought justice beyond that for the underlying murder of the woman. The legislature debated proposed legislation extensively. Effective October 2019, the law was changed to allow for a defendant’s



sentence to be increased by up to 10 years if the defendant knew or reasonably believed the victim was pregnant. Delegate Moon noted that part of the debate was a concern as to whether the proposed legislation was a back door effort to give legal consequence to two beings versus one. Delegate Moon noted that groups on both sides of the abortion debate and the Catholic Conference got involved in negotiations, which is why the final version of the bill referenced the defendant's knowledge of or belief in the victim's pregnancy, rather than the life of the child.

Dr. Soulé noted that the Subcommittee discussed during their meeting the 2019 law referenced by Delegate Moon (Laura and Reid's Law). Dr. Soulé noted that the law provides for an additional penalty that may be imposed separate from and consecutive to or concurrent with the sentence for the underlying crime. Given that both the underlying act and the additional penalty would be a part of the same sentencing event, the sentencing guidelines would not be adjusted in any manner to account for the additional severity of the case.

Judge Avery stated that she wanted to address the political context of the discussion, noted by Delegate Moon. Judge Avery stated that the life of the child was not something discussed by the Subcommittee nor was the proposed change in language motivated by political concerns. Judge Avery further noted that, in her experience, concern about pregnancy stems from two factors. First, pregnant women are statistically more vulnerable than non-pregnant women to abuse and violence committed by their domestic partners or spouses. Second, due to concerns about their child, family, and housing, pregnant women are subject to stronger power and control on the part of their abuser. As such, pregnant women are more likely than non-pregnant women to stay in an abusive or dysfunctional household. Judge Avery noted that these concerns have been discussed in domestic violence advocacy groups for 35 years.

Judge Avery further noted that, from a judicial perspective, pregnancy adds to the seriousness or depravity of the underlying crime. Therefore, Judge Avery stated it would be fair to say that pregnancy is a victim vulnerability given special consideration by judges at sentencing.

Dr. Soulé noted that the 2019 law, allowing for an additional penalty of up to 10 years when the defendant knew or reasonably believed the victim was pregnant, applies only when the underlying offense is a crime of violence, as defined under CR, § 14-101, which excludes second degree assault. Many domestic violence cases are prosecuted as second degree assault.

Delegate Moon noted that he raised during the legislative debate some of Judge Avery's arguments about the gender-based nature of crimes against pregnant women.

Dr. Johnson stated that he shared Mr. Finci's concern that this language would build a prescriptive nature into what are currently descriptive guidelines. Dr. Johnson provided the example of a bar fight between two intoxicated individuals. The proposed language would obligate the judge to consider a point for special victim vulnerability, which would



suggest that a bar fight is a worse offense than an assault that occurs outside of this context. Dr. Johnson asked whether these factors should be built into the victim vulnerability point or, instead, used as a reason for departure from the guidelines. Dr. Johnson also noted that being asleep seems very different from being intoxicated or unconscious.

Judge Avery noted that there is a gender divide in this issue, as many men cannot imagine the vulnerability of being asleep, whereas women see sleep and the other aforementioned conditions as obvious vulnerabilities. Judge Avery noted that these factors often make women more vulnerable to violent or sexual crimes. Judge Avery expressed that, prescriptively, these are factors that judges should consider at sentencing. Judge Avery further noted that, in the past, these factors were used to downgrade the severity of a crime, for instance by blaming a woman for their intoxication or pregnancy. Judge Avery suggested that, in a more modern world, judges are considering these factors as vulnerabilities. Judge Avery noted that while she agreed all three factors (sleep, intoxication, and unconsciousness) should be included in the definition of victim vulnerability, she feels particularly strongly about unconsciousness and intoxication.

Ms. Grenier noted that she previously served as a victim advocate in Frederick County, specializing in domestic violence cases. Ms. Grenier stated that she was amazed at the number of pregnant, intoxicated, and/or unconscious victims with which she interacted in her position as victim advocate.

Mr. Finci thanked Judge Avery and Ms. Grenier for sharing their perspectives. Mr. Finci noted that the proposed definition of victim vulnerability expands beyond the scenarios described by Judge Avery and Ms. Grenier. The expanded definition would also affect unintended parties, for instance the intoxicated victim in a bar fight. Mr. Finci suggested that the Commission narrow the proposed definition of vulnerable victim.

Judge Wilson stated that as a former prosecutor, he observed that judges in his jurisdiction (Washington County) account for whether at the time the crime began; the victim was sleeping or unconscious. Judges comment on these factors at sentencing and consider them. Judge Wilson noted that many child sexual abuse cases involving a household member begin with a sleeping victim. Judge Wilson stated that he would consider sleep a temporary disability because the individual is unaware of their surroundings and unaware of what is about to be done to them. Judge Wilson stated that he would be interested in hearing the perspective of Mr. DeLeonardo, who has experience as both defense and prosecution in a different jurisdiction (Carroll County) than Judge Wilson practices.

Mr. DeLeonardo stated that the issue of pregnancy and domestic violence is particularly important. In his experience, Mr. DeLeonardo noted that he always found judges to consider pregnancy as an aggravating factor in domestic violence cases and sentence accordingly. In terms of unconsciousness and sleep, Mr. DeLeonardo noted that he has seen instances in which it is difficult to determine whether the victim was asleep or passed out from intoxication. Mr. DeLeonardo suggested that the proposed guidelines



language should not get into this level of detail, but rather provide factors that the court may consider at sentencing.

Judge Wilson asked if the Guidelines Subcommittee was looking for the Commission to take a vote. Dr. Soulé confirmed that the Subcommittee proposed the language as an action item. Judge Wilson asked if any Commissioner would like to make a motion. Mr. DeLeonardo made a motion to adopt the recommendation of the Subcommittee. Senator Kelley seconded Mr. DeLeonardo's motion. Judge Wilson stated that the vote would be done in the negative and asked if anyone was against the language proposed by the Subcommittee. Mr. Davis expressed opposition. The motion passed with one vote in opposition.

b. Review of the Definition of an ABA Plea Agreement and the ABA Plea Agreement Compliance Rule (Status report)

Dr. Soulé noted that the second item on the agenda is the continued review of the definition of ABA plea agreements and the ABA plea agreement compliance rule. Dr. Soulé referred Commissioners to the memorandum entitled, *Review of the Definition of an ABA Plea Agreement and the ABA Plea Agreement Compliance Rule (Status Report)*, and the corresponding *Supplemental Information on ABA Pleas*.

Dr. Soulé stated that the MSCCSP staff routinely receives inquiries from practitioners concerning what constitutes an ABA plea, and in particular, the level of specificity required for a plea agreement to be considered an ABA plea. For example, is an agreement to cap the sentence at the upper guidelines limit an ABA plea agreement, or is that agreement too broad to qualify? Because of these questions, the MSCCSP 2019 Annual Report indicated a plan to review in 2020 the current definition of binding ABA pleas, with the understanding that the review would necessitate a fuller discussion of guidelines compliance and the longstanding ABA plea agreement compliance rule. For purpose of review, Dr. Soulé noted that the ABA compliance rule indicates that sentences pursuant to an ABA plea agreement are deemed guidelines-compliant regardless of whether the guidelines-applicable sentence falls within the guidelines range.

Dr. Soulé indicated that during the 2020 Legislative Session, House Bill 1458 was introduced, providing that a sentence imposed pursuant to a plea agreement may not be deemed compliant with the sentencing guidelines unless the sentence falls within the actual sentencing guidelines range. The MSCCSP submitted a written statement opposing the legislation, but also indicated that the Commission already planned to review ABA pleas in general, and the longstanding ABA plea compliance rule. The testimony further noted that the Commission requested that the legislature defer to allow the Commission to study the issue and report its findings to the legislature by the start of the 2021 General Assembly session. HB 1458 did not advance out of the Judiciary Committee.

Dr. Soulé noted that the Guidelines Subcommittee initiated a robust discussion regarding ABA pleas and the compliance rules at its June 18, 2020, meeting and continued the discussion at its August 31, 2020, meeting. The Subcommittee considered the following two questions:



1. Should the MSCCSP clarify the definition of an ABA plea agreement and/or provide specific examples of what constitutes an ABA plea?
2. Should sentencing events resolved by an ABA plea agreement continue to be deemed compliant, even if the sentence is outside of the recommended sentencing guidelines range?

To assist with the discussion of the first question, the MSCCSP staff provided the Guidelines Subcommittee with information on the definition of a binding plea in the federal system and three neighboring jurisdictions. The staff also reviewed the ABA standards for guilty pleas and did not identify language that expressly defines a “binding” plea. The Guidelines Subcommittee’s discussion focused largely on the federal rule regarding plea agreements. Specifically, binding plea agreements are covered in Federal Rule 11(c)(1)(C).

To help inform the discussion of the second question, the MSCCSP staff also provided the Guidelines Subcommittee with an analysis of how sentences for sentencing events resolved by an ABA plea agreement compare with sentences for sentencing events not resolved by an ABA plea agreement in calendar years 2017-2019. Dr. Soulé referred Commissioners to the supplemental document for full details on this analysis.

The analysis considered the use of ABA pleas by type of offense, by circuit, and by defendant race. Dr. Soulé noted several key findings. First, sentencing events resolved by an ABA plea agreement are less likely to be within the recommended guidelines range than sentencing events resolved by other dispositions (57.3% of ABA pleas are within range compared with 67.8% of other dispositions). Second, the difference in strict guidelines compliance for sentencing events resolved by an ABA plea agreement versus other dispositions is largest for drug offenses. Among drug offenses, 46.3% of ABA pleas are within guidelines range compared with 66.2% of other dispositions. Third, ABA plea agreements are much more frequent in the Eighth Circuit than elsewhere. 79.7% of dispositions in the Eighth Circuit are ABA pleas whereas the use of ABA pleas in other circuits ranges from 10.4% to 56.3%. Finally, ABA plea agreements are more common for non-white defendants than for white defendants. Approximately 50% of sentencing events for non-white defendants are resolved by an ABA plea compared with 36.4% of sentencing events for white defendants.

Dr. Soulé noted that the Guidelines Subcommittee agreed that the term “ABA plea agreement” is not universally known and should be replaced with the more intuitive “three-party binding plea agreement.” Further, the Guidelines Subcommittee agreed that the definition of what constitutes a guidelines-compliant plea agreement should be “tightened,” potentially specifying agreement as to both the charge(s) and the specific sentence, not merely a sentence cap or range. The Guidelines Subcommittee asked staff to review relevant case law and draft a revised MSCCSP definition of three-party binding plea agreements for the Guidelines Subcommittee to consider at its next meeting.

Regarding the ABA plea agreement compliance rule, the Guidelines Subcommittee noted in its discussion that the Commission will conduct its next cell-by-cell compliance



analysis in 2021 to determine if any of the guidelines ranges in the three matrices should be amended. In the past, the Commission has been guided by two principles when conducting its cell-by-cell analysis: (1) the compliance rate by cell and (2) the average sentence length by cell. Because of the ABA plea agreement compliance rule, in the past few cells have had compliance rates below the Commission's benchmark of 65%. During this next analysis, the Commission may decide to be guided primarily by average sentence length. An analysis guided primarily by average sentence length would be consistent with the descriptive nature of the guidelines.

Dr. Soulé indicated that the Guidelines Subcommittee expects to present its recommendation of revised language for the ABA plea term and definition of a guidelines-compliant plea agreement at the MSCCSP's December 8, 2020, meeting.

Judge Wilson invited comment on the issue and expressed appreciation for the Subcommittee's thorough discussion of the topic. Judge Avery thanked Dr. Soulé for providing a summary of the Subcommittee's discussion.

5. Executive Director Report – Dr. David Soulé

Dr. Soulé reported that he had five items to review. Dr. Soulé noted that they are all status items, but that he is looking for input with regard to the last item.

a. Proposal to report jurisdiction-specific analyses (Status report)

Dr. Soulé reminded Commissioners that on August 11, 2020, he sent an email to the Commission asking for input on a proposal to amend the MSCCSP's informal policy regarding jurisdiction-specific reporting of sentencing guidelines data. He noted that the Commission maintains an informal policy that excludes jurisdiction-specific analyses in MSCCSP reports and publications. Instead, the MSCCSP reports utilize judicial circuit as the unit of analysis for geographic analyses. He noted that the Commission adopted this informal policy many years ago because seven of the 24 circuit courts in Maryland have only one circuit court judge and therefore, jurisdiction-specific analyses are tantamount to judge-specific analyses in those seven jurisdictions. Dr. Soulé further noted that on occasion, visiting judges also sit in those seven jurisdictions, so no jurisdiction is truly a "one-judge shop".

In the email, Dr. Soulé had asked if there was any opposition to this proposal. He reported that one Commissioner did respond in opposition. Additionally, Dr. Soulé reported that he reached out to Judge Laura Ripken who is the Anne Arundel County Circuit Court Administrative Judge, the 5th Judicial Circuit's Administrative Judge, and also the Chair of the Conference of Circuit Judges. He stated that Judge Ripken informed him that she discussed the proposal on a conference call with all of the county administrative judges and that they unanimously expressed opposition to jurisdiction-specific reporting. Dr. Soulé reported that contrary to what he had indicated in his email to the Commission on August 11, Judge Ripken indicated there was concern from the smaller jurisdictions in particular. Additionally, she noted that there was concern that the



information could be misinterpreted and that judges do not have the ability to respond to public comment. Dr. Soulé noted that these concerns are similar to previously cited concerns related to recent legislative proposals. He stated that Judge Ripken indicated that she appreciated the opportunity for the court administrative judges to share their input on this issue.

Based on the opposition from one of the MSCCSP Commissioners and the feedback from Judge Ripken regarding the position of the 24 administrative judges, Dr. Soulé reported that both he and Judge Wilson believe it is best to withdraw the proposal to report jurisdiction-specific analyses.

Senator Kelley stated that even if someone else occasionally sits in a smaller jurisdiction, it is probably easy, whether intentionally or unintentionally, to keep track of the name of the specific judge. Accordingly, Senator Kelley indicated that she agreed with the recommendation to stick with circuit level reporting. Judge Avery noted that she originally supported the jurisdiction-specific analyses, but after learning of the feedback from judicial colleagues, she supports withdrawing the proposal.

Mr. Finci questioned whether the Commission was inviting more legislative interruption by not conducting jurisdiction-specific analyses. Senator Kelley responded that although the legislature could take action, she does not think that they will take action. Mr. Finci suggested that he should have asked about gubernatorial, as opposed to legislative, interruption. Judge Wilson added that he believed the way the MSCCSP is currently reporting information is consistent with the statutory language of the Commission's enabling legislation. Senator Kelley and Dr. Soulé confirmed that circuit-level reporting is in accordance with the Commission's enabling legislation. Dr. Soulé further clarified that because circuit-level reporting is cited in the Commission's enabling legislation, it could be interpreted as the minimal level of reporting. Therefore, the Commission is meeting the minimal level requirement. Judge Wilson noted that with regard to attracting legislative attention, it does not matter what action the Commission takes. Inaction and action can both attract attention equally because there are so many diverse thought processes that inhabit the chambers of Annapolis.

b. Sentencing guidelines training webinars (Status report)

Dr. Soulé reported that the staff has been working to continue to provide training during the COVID-19 pandemic. Since in-person trainings are on hold for a while, the staff transitioned to providing interactive online webinars. Dr. Soulé stated that he was pleased to report that the staff completed their first webinar trainings on August 5 and a second on August 12. Approximately 125 criminal justice practitioners participated in the two webinars. Dr. Soulé reported that the allotted participants for each webinar filled up quickly and as a result, the staff uploaded a recording of the webinar to the MSCCSP's YouTube channel so that anyone can view the training on their own schedule. To date, there are more than 130 views of the webinar on YouTube.



Dr. Soulé noted that while the number of training sessions provided is down due to COVID-19, there is one positive about the switch to online webinars. Specifically, the MSCCSP is reaching a broader audience in terms of the total number of individuals who are able to view and/or participate in the training sessions. He also reported that the Judicial College invited the staff to lead a webinar for judges. The webinar titled, “*Making Informed Sentencing Decisions: Enhancing Sentencing Guidelines and Policy Knowledge*” is scheduled for September 22, 2020.

Judge Wilson asked if the forthcoming Judicial College webinar will also be uploaded to the MSCCSP’s YouTube channel. Dr. Soulé clarified that it will not but will be made available through the Judicial College’s digital library.

c. Criminal justice community survey (Status report)

Dr. Soulé provided a status update on the criminal justice community survey that was distributed in May. Dr. Soulé stated that the staff is analyzing the results of the survey. There were a number of open-ended questions and the staff is working to identify the best way to present the information. The staff anticipates that a report on the survey results will be provided at the December 8, 2020, MSCCSP meeting.

d. Sentencing Snapshot report (Status report)

Dr. Soulé reminded Commissioners that during the July 7, 2020, meeting, he noted that the staff were working to produce a series of topical, mini reports entitled, *Sentencing Snapshot*, which are intended to provide a brief review of sentencing trends and other topics of interest. Dr. Soulé reported that staff released the first issue of the *Sentencing Snapshot* on July 20, 2020, which provides a closer look at crimes of violence and firearms offenses. He noted that the next issue is planned for October and will examine “other” person offenses (i.e., person offenses that are not classified as crimes of violence or firearms offenses). Dr. Soulé further noted that all issues of *Sentencing Snapshot* are posted to the MSCCSP website.

e. Review of protocol for December 8, 2020, public comments hearing (Status report with request for input)

Dr. Soulé reminded Commissioners 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 address the Commission with sentencing-related issues. The MSCCSP’s 2020 public comments hearing is scheduled for December 8th at 5:00pm. The public comments hearing will be followed by a regular business meeting. Dr. Soulé reported that staff will distribute a hearing invitation next month to approximately 35 key criminal justice stakeholders throughout the State. Additionally, staff will distribute the invitation to the roughly 1,000 criminal justice practitioners currently receiving the MSCCSP’s electronic newsletter, *Guidelines E-News*, as well as to Commissioners. He encouraged Commissioners to share the invitation with those they deem appropriate. In addition, Dr. Soulé reported that the hearing will be announced on



the MSCCSP's website, the Maryland Register, and the Maryland General Assembly's hearing schedule.

Dr. Soulé stated that there were a few other administrative items regarding the protocol for the public comments hearing that he would like to discuss with and solicit feedback from the Commission. First, Dr. Soulé noted that he communicated with Judge Wilson and it was agreed that the Commission should plan for the public comments hearing to proceed as a videoconference. Staff researched virtual platform options for the public comments hearing and believes that *Zoom webinar* will work well to provide a mechanism to allow for speaker registration. Dr. Soulé stated that if something changes and an in-person option becomes available, the MSCCSP may consider that option. A decision would need to be made by November 1, 2020, however, to allow enough time to publish the meeting details.

Senator Kelley suggested that the Commission proceed with the videoconference format. She noted that it is unlikely the Commission will be able to proceed with its normal format of holding the public comments hearing in the House Judiciary Committee's meeting room, as the General Assembly is trying to figure out how to meet the constitutional requirements for the upcoming legislative session in January, while keeping everyone as safe as possible. Senator Kelley stated that it would be easier to have an uninterrupted meeting via Zoom. Dr. Soulé agreed and stated that if there is a positive aspect, holding the meeting virtually opens up the opportunity to participate for those not able to travel to Annapolis. A broader audience may be reached.

Dr. Soulé asked whether the staff should begin the public hearing with a presentation on the history, purpose, and goals of the sentencing guidelines and the MSCCSP. Dr. Soulé stated that the idea for a presentation was suggested in the past by Judge Avery in order to provide a brief background for those who may not be familiar with the work of the Commission.

Judge Avery stated that she believed a presentation is very important and would like to address the history of the sentencing guidelines and the Commission's inception. Judge Avery would also like to acknowledge Senator Kelley as the Commission's resident historian, as Senator Kelley provides tremendous insight regarding the purpose of the Commission. Judge Avery stated that it is important for Commissioners and members of the public to understand the MSCCSP's history. She also noted that she believes the Commission's enabling legislation should be expressly addressed in the presentation to emphasize that the MSCCSP exists because the Legislature created it by statute. Judge Avery stated that it is important for all members of the Commission to understand the provisions of its enabling legislation, where it came from, and why it exists. Dr. Soulé and Judge Wilson agreed that the presentation was a great idea.

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



6. Old Business

None.

7. New business and announcements

None.

The meeting adjourned at 6:48 pm.