



Minutes

Maryland State Commission on Criminal Sentencing Policy
Maryland Judicial Center
Annapolis, MD 21401
December 3, 2024

Commission Members in Attendance:

Honorable Dana M. Middleton, Chair
Rodney R. Davis
Honorable Brian L. DeLeonardo
Richard A. Finci, Esq.
Matthew B. Fraling, Esq., *representing Public Defender Natasha Dartigue*
Angelina Guarino, *representing Secretary Carolyn J. Scruggs*
Robert H. Harvey, Jr., Esq.
Brian D. Johnson, Ph.D.
Larry L. Johnson
Delegate David H. Moon
Alethea P. Miller
Honorable Michelle R. Saunders
Kyle E. Scherer, Esq.
Honorable Melanie M. Shaw
Senator Christopher R. West

Staff Members in Attendance:

Sarah Bowles
Julia Caspero
Stacy Najaka, Ph.D.
Anabella Nosel
Katharine Pembroke
David Soulé, Ph.D.

1. Call to Order

MSCCSP Chair, Judge Dana M. Middleton, called the meeting to order.

2. Declaration of Quorum

The meeting began at 5:50 p.m. A quorum was established in advance of the annual public comments hearing.



3. Approval of Minutes

The minutes from the September 10, 2024, MSCCSP business meeting were approved as submitted.

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

Judge Shaw stated that the Guidelines Subcommittee met on November 18, 2024, and reviewed two items. Judge Shaw turned the discussion over to Commission staff to summarize each of the items.

a. Proposal to study prior adult criminal record score (Action item)

Ms. Bowles referred commissioners to the memorandum labeled *Proposal to Study the Prior Adult Criminal Record Score Component of the Offender Score*. She explained that the proposal was one of the recommendations included in the Commission's 2023 report, *An Analysis of Racial Differences in Sentencing Events*. The prior adult criminal record score is one component of the guidelines' offender score, and it classifies the adult prior record into one of four categories (none, minor, moderate, or major) based on the number and severity of one's prior adjudications. Placement is based on a matrix, and numerous different combinations of offenses can place someone in the minor, moderate, and major categories.

In the race report, MSCCSP staff looked at the number and severity of offenses that composed defendants' prior record scores. For those analyses, staff used prior record data that was previously collected for the Commission's 2018 juvenile delinquency study. This data included guidelines individuals sentenced from 2008 through 2012. Ms. Bowles noted that one reason for including these analyses in the report was the concern expressed by some practitioners that defendants were scoring major prior records based on the accumulation of multiple *minor* offenses. Staff's analyses did not suggest that this was the case, as very few defendants scored a major prior record based on the accumulation of multiple minor offenses.

The race report did, however, find that Black guidelines individuals sentenced from 2008 through 2012, on average, scored higher on the prior adult criminal record score than White, Hispanic, or other race individuals. Black guidelines individuals, on average, were more likely than individuals of any other race to have any prior adult criminal record, to have a greater number of prior adult adjudications, and to have a record of more serious prior adult adjudications. These differences in prior records, in part, explained the generally higher incarceration rates and longer sentences observed among Black guidelines-sentenced individuals relative to White individuals.

Ms. Bowles explained that the staff's ability to draw conclusions based on racial differences was limited due to the age of the data and issues with missing data. Therefore, the Commission included in the report a recommendation that the Commission conduct a new study specifically assessing whether the offender score may be amended to reduce previously existing racial and ethnic differences.



The new study would replicate some of the analyses in the race report, including looking at the number and severity of defendants' prior adult adjudications. The staff also suggested that the new study examine the application of the criminal record decay factor. The criminal record decay factor allows for the prior record score to be reduced by one level if the defendant has lived in the community for at least ten years prior to the instant offense without criminal justice system involvement resulting from an adjudication or a plea of no contest.

To complete this study, MSCCSP staff will need prior record or RAP sheet data from the Department of Public Safety and Correctional Services (DPSCS). The staff has started discussing the logistics of this request with Angelina Guarino, Assistant Secretary of Data, Policy, and Grants at DPSCS and Secretary Scrugg's representative on the Commission.

The MSCCSP's goal is to obtain the data in 2025, and the timeline is tentative and will depend on when they receive the data. The staff estimates that it will take about eight months to prepare and analyze the data, and after the staff will present their findings to the Guidelines Subcommittee and then the full Commission.

Ms. Bowles noted that the analyses are exploratory at this point. The Guidelines Subcommittee unanimously agreed to recommend the proposal while acknowledging that the study should proceed without any preconceived decisions about future policy decisions.

A motion was made and seconded to accept the recommendation of the Guidelines Subcommittee. **The Commission voted unanimously for the proposal to study prior adult criminal record score.**

b. Judicial inquiry to examine automatically assigning points in the sentencing guidelines offense score for victim injury in cases involving child sexual abuse (Action item)

Dr. Soulé presented the next item of the Guidelines Subcommittee report.

Dr. Soulé explained that during a September 2024 sentencing guidelines feedback meeting conducted with the judges in the First Judicial Circuit, a judge asked whether the MSCCSP would consider automatically assigning victim injury points in the sentencing guidelines offense score in cases involving child sexual abuse. This judge and his colleague noted that an argument could be made that the MSCCSP should consider revising this rule similar to how the Commission revised the rule regarding child pornography.

Dr. Soulé reminded Commissioners that in October 2021, the Commission adopted revisions to instruct that permanent victim injury points *shall* be awarded in cases involving evidence of child pornography. Specifically, the revisions instruct that offenses involving photographic or video evidence of child pornography shall be scored as permanent victim injury. The revisions were adopted to recognize that photographic and video evidence of child pornography often exists in perpetuity, and the victims of



these crimes suffer lasting psychological consequences and are revictimized every time an image is viewed, possessed, or distributed.

The judge noted that [SB 17 \(2022\)](#) requires judges to receive 20 hours of training before presiding over child custody cases involving child abuse or domestic violence, and further noted that during the training judges learned that research shows that even non-verbal infants suffer serious and permanent injury from child abuse. There is an abundance of well-documented research showing the long-term impacts of sexual abuse. The judge shared some of this research, and the staff will review the research when preparing the corresponding research memorandum on this topic.

Accordingly, the judge and his colleagues believe it would be appropriate for the MSCCSP to consider amending the guidelines to instruct that permanent victim injury points should be assigned for child sexual abuse cases in Part B of the guidelines offense score. Given the judges' direct request, Dr. Soulé brought the issue to the attention of the Guidelines Subcommittee. The Subcommittee agreed to recommend to the full Commission at this meeting that this topic should be assigned to the Subcommittee for further review.

If the Commission agrees with this recommendation, the MSCCSP staff will then prepare a research memorandum to guide the Subcommittee's review at its next meeting, which is likely to be scheduled in April 2025.

Finally, the Guidelines Subcommittee thought it would be helpful to invite the judges who brought this issue to Dr. Soulé's attention to speak on this topic at today's public hearing, but neither of the judges were available today. The Commission can consider inviting them when and if they put this item on the agenda for a vote.

Judge Shaw added that anytime a judge asks the Commission to investigate something, it should be taken seriously, as judges are directly involved in deciding sentencing.

Senator West expressed the importance of this issue, as [SB 17 \(2022\)](#) was his bill, and it is not well enough understood the damage sexual abuse can inflict on children.

Mr. Harvey noted that he spoke with a prosecutor in his office and was struck that victim injury points are not always awarded for these cases.

Mr. Finci added that, coming from his experience working on child sexual abuse cases, victim injury points are almost always assigned, and sentencing is set very high. He suggested that MSCCSP staff examine the sentencing data for these cases.

A motion was made and seconded to accept the recommendation of the Guidelines Subcommittee. **The Commission voted unanimously for the proposal to examine automatically assigning points in the sentencing guidelines offense score for victim injury in cases involving child sexual abuse.**



5. Executive Director Report – Dr. David Soulé

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

a. November 1, 2024, sentencing guidelines updates (Status report)

Dr. Soulé reported that the MSCCSP issued new versions of the Maryland Sentencing Guidelines Manual (MSGM) and Guidelines Offense Table and adopted corresponding updates in the Code of Maryland Regulations (COMAR), effective November 1, 2024. These updates include the classification of new offenses passed during the 2024 Legislative Session, the classification of one previously unclassified offense, revised seriousness categories for two offenses, and minor edits to the table. These updates were highlighted in the November 2024 Guidelines E-News that was distributed to the Commission's listserv on November 1, 2024.

b. Sentencing guidelines training and judiciary feedback meetings (Status report)

Dr. Soulé reported that on October 7, 2024, the MSCCSP's training coordinator, Katharine Pembroke, and research assistant, Bella Nosel, provided an in-depth training for 25 parole and probation investigators and supervisors at the DPSCS training center in Sykesville, Maryland.

Dr. Soulé further shared that since the Commission's last meeting in September, he met with judges and court staff in 11 jurisdictions. Dr. Soulé first met with judges at the Second Judicial Circuit bench meeting, including circuit court judges from Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties, on September 23, 2024. Next, Dr. Soulé met with the judges in the First Judicial Circuit, which includes the circuit court judges from Dorchester, Somerset, Wicomico, and Worcester Counties, on September 26, 2024. Lastly, Dr. Soulé met with the judges in Allegany County on October 18, 2024, and finally with the judges in St. Mary's County on November 21, 2024.

Dr. Soulé's goal is to meet with each jurisdiction every two to three years to review sentencing guidelines data, discuss recent guidelines updates, and solicit feedback regarding the sentencing guidelines and work of the MSCCSP.

c. Review of protocol for MSCCSP response to legislative proposals (Status report)

Dr. Soulé reminded commissioners that in 2019, the MSCCSP adopted a protocol for responding to legislative proposals. Given that the General Assembly session starts next month and considering that the Commission has several new commissioners appointed since this time last year, Dr. Soulé believed it would be helpful to review the protocol. During the past few legislative sessions, the legislature introduced a few bills with the potential to affect the MSCCSP beyond its routine operations. Given that the Commission does not typically meet during the legislative session, the Commission adopted a policy to guide future responses to legislation that directly affects the sentencing guidelines and/or the operations of the Sentencing Commission.

The MSCCSP assesses the fiscal and operational impact of all legislation that affects criminal sentencing policy. Legislation that creates new offenses and/or alters the



penalties for existing offenses represent most of these bills, and they do not impact the MSCCSP beyond its routine operations. Dr. Soulé explained that the policy he is referencing is titled, *Policy for the MSCCSP Response to Legislative Proposals*, and refers to legislation that impacts the MSCCSP beyond these routine operations.

For these less common, non-routine bills, the Commission adopted the following proposal:

1. The MSCCSP staff shall identify legislative proposals that will affect the sentencing guidelines and/or the MSCCSP's operations.
2. The staff shall promptly notify the MSCCSP Chair of such proposals and the bills' hearing dates before the relevant legislative committees, when known.
3. The MSCCSP Chair and/or MSCCSP staff will schedule a virtual meeting for the full Commission with the purpose of soliciting feedback and requesting a vote whether to support, oppose, or take no position on the proposed legislation. The MSCCSP will provide prompt notice of the scheduled date and time for the conference call and will offer public access to the teleconference by publishing a call-in number on the MSCCSP website. The MSCCSP will adopt the majority position of the voting Commission members, provided that a quorum of Commission members participates in the conference call.
4. The MSCCSP Chair and the Sentencing Guidelines Subcommittee shall convene in a timely manner to consider relevant bills after receiving feedback from the full Commission.
5. The MSCCSP Chair and Sentencing Guidelines Subcommittee will decide whether it is necessary, and if so, present the position of the Commission to the legislative committees, legislative leadership, and/or Governor.
6. The MSCCSP staff, in conjunction with the MSCCSP Chair and the Sentencing Guidelines Subcommittee, will prepare formal testimony for relevant Senate and House bill hearings.

Dr. Soulé also noted that this protocol was circulated via email to the commissioners.

d. Update on preparation of the MSCCSP 2024 annual report (Status report)

The MSCCSP 2024 Annual Report is due on January 31, 2025. Dr. Soulé explained that staff have begun preparations for the annual report and will distribute a draft for commissioners to review on or about January 17, 2025. Additionally, Dr. Soulé reminded commissioners to direct any feedback, questions, or concerns related to the annual report directly to him, and staff will review and incorporate feedback as needed ahead of the January 31st deadline.

e. MSCCSP FY 2026 budget update (Status report)

Dr. Soulé noted that the MSCCSP continues to work with the Governor's Office of Financial Administration and the Department of Budget Management to complete the



Commission's Fiscal Year (FY) 2026 budget submission request, and that it will be finalized in January.

6. Proposed 2025 MSCCSP Meeting Dates

Dr. Soulé presented the proposed meeting dates for 2025 and asked if there were any objections. Dr. Soulé confirmed that the May and December meetings would be held in person, while the July and September meetings would be held via videoconference. Seeing no objections, the proposed meeting dates for 2025 were adopted as follows:

- Tuesday, May 6, 2025 (in-person)
- Tuesday, July 8, 2025 (videoconference)
- Tuesday, September 9, 2025 (videoconference)
- Tuesday, December 2, 2025 (in-person)

7. Old Business

There was no old business to discuss.

8. New Business and Announcements

There was no new business to discuss.

The meeting was adjourned at 6:27 p.m.