



Minutes

Maryland State Commission on Criminal Sentencing Policy
Maryland Judicial Center
Annapolis, MD 21401
December 5, 2023

Commission Members in Attendance:

Honorable Brian L. DeLeonardo, Chair
Honorable Shannon E. Avery, Vice-Chair
Delegate J. Sandy Bartlett
Richard A. Finci, Esq.
Robert H. Harvey, Jr., Esq.
Brian D. Johnson, Ph.D.
Larry L. Johnson
Alethea P. Miller
Honorable Michelle R. Saunders
Kyle E. Scherer, Esq.
Honorable Melanie M. Shaw
Senator Charles E. Sydnor, III
Senator Christopher R. West
Donald Zaremba, Esq., *representing Public Defender Natasha Dartigue*

Staff Members in Attendance:

Lydia Becker
Sarah Bowles
Stacy Najaka, Ph.D.
Katharine Pembroke
Kathy Sanchez
David Soulé, Ph.D.

Visitors: Judge Dana M. Middleton, Circuit Court for Baltimore City; Matthew D'Ambrosi, Chief of Staff, Delegate J. Sandy Bartlett

1. Call to Order

MSCCSP Chair, Judge Brian L. DeLeonardo, called the meeting to order.

2. Declaration of Quorum

The meeting began at 6:06 p.m. A quorum was established in advance of the annual public comments hearing.



3. Approval of Minutes

The minutes from the September 12, 2023, MSCCSP business meeting were approved as submitted.

4. Guidelines Subcommittee Report – Judge Shannon Avery

Judge Avery stated that the Guidelines Subcommittee met on August 30, 2023, and reviewed three items. Judge Avery turned the discussion over to Commission staff to summarize each of the three items.

a. OMSP enhancement request for abuse of position of trust (Status report)

Dr. Soulé referred Commissioners to the corresponding memo titled *OMSP Enhancement Request for Abuse of Position of Trust*. Dr. Soulé reminded Commissioners that a letter from the Office of the Maryland State Prosecutor (OMSP) was presented at the May 9, 2023, Commission meeting, detailing the OMSP's request that the Commission consider an enhancement for offenses involving an abuse of a position of trust. Dr. Soulé noted that the Commission heard testimony regarding this request from three members of the OMSP during the MSCCSP public comments hearing earlier in the evening. The Commission previously referred this request to the Guidelines Subcommittee for review, and the Subcommittee now suggests that the Maryland Legislature may be better positioned than the MSCCSP to address penalties for misconduct in office.

Dr. Soulé provided a summary of the Subcommittee's discussion. Dr. Soulé noted that the MSCCSP staff met with OMSP staff to discuss the logistics of the proposed enhancement and to review relevant data. The OMSP staff then proposed a two-seriousness category increase for any offense in which the defendant abused a position of trust.

At the November 15, 2023, Guidelines Subcommittee meeting, Deputy State Prosecutor Sarah David and her colleague provided a presentation regarding the importance of this issue. The Subcommittee discussed possible options for this proposed enhancement and how it might impact the sentencing guidelines. The Subcommittee was amenable to this request but was concerned that this enhancement would be a prescriptive change to the guidelines, contrary to the primarily descriptive nature of the guidelines. The Subcommittee then discussed misconduct in office, which is classified as a seriousness category V offense. This seriousness category is commonly associated with misdemeanors. Dr. Soulé noted that most sentences related to misconduct in office are guidelines compliant (90%), with more departures above than below the guidelines, partially because probation is the lower range for most of these cases.

Members of the Subcommittee noted that adjusting the penalty for misconduct in office may be a legislative issue. MSCCSP staff added that the classification for misconduct in office is more open to judgement than most offenses because it is a common law offense and has no statutory maximum penalty. The Subcommittee voted to table the issue and share their concerns with the Commission for further discussion. The Subcommittee ultimately suggested that the legislature may be better positioned than the Commission



to address penalties for misconduct in office. The legislature could codify misconduct in office and assign it a statutory maximum penalty.

Dr. Soulé then opened the discussion to Commissioners. Judge Shaw stated that she believed the OMSP request had two components: (1) increase the guidelines and (2) collect data. Dr. Soulé verified this interpretation. Dr. Soulé stated that the Subcommittee also discussed whether the legislature should consider codifying misconduct in office and whether the Commission should reclassify misconduct in office. Dr. Soulé noted that the OMSP's request more broadly asked for an enhancement to all offenses involving a position of trust, beyond just misconduct in office.

Judge Shaw asked if the OMSP's request directly asked for data collection. Judge Avery was also confused as to whether the OMSP was requesting this data collection component, as she did not recall such a discussion during the November 15, 2023, Guidelines Subcommittee meeting. Judge Avery believed that the request was not for a stand-alone indicator for whether there was a violation of a position of trust, but rather that an enhancement for this type of offense would instead allow these cases to be identified in the data.

Judge DeLeonardo noted that judges may not always detail the specific departure reason for position of trust cases, and that these cases may not even be identifiable if there was no departure. Given that misconduct in office is a common law offense, Judge DeLeonardo suggested that the Commission compare the classification of misconduct in office to other offenses in the same category, as misconduct in office naturally carries a position of trust. For example, embezzlement will always involve a breach of trust, so this proposed enhancement would be adding an element to a crime that already exists.

Mr. Harvey said that he is not prepared to say that the Commission should consider adding an enhancement for position of trust cases because they may compound the severity of crimes that already include as an element that the defendant holds a position of trust, such as child abuse cases. Mr. Harvey believes that the Commission should, instead, consider elevating misconduct in office from a category V to a category IV or category III offense. He noted that this alteration would not significantly affect the guidelines but would reflect the severity of the offense. Judge DeLeonardo expressed concern that a "position of trust" might be overextended to include individuals such as a receptionist.

Mr. Finci expressed concern that the OMSP's position with this request seemed to be related to shifting the balance of power in plea negotiations. Mr. Finci stated that from his time on the Commission, he had been present for several requests that involved shifting the balance of power in favor of the defense, and these requests had not often been successful. He suggested that the OMSP should instead go to the legislature for this request. Judge Avery stated that she was interested in Ms. David's point about disparities that occur in position of trust cases when individuals in upstanding positions do not receive a sentence reflecting the severity of their offense, such as in cases of sexual misconduct. Judge Avery agreed that the OMSP should go to the legislature. She



referenced that “crimes of violence” are legislatively defined and operate as an umbrella enhancement, and that something similar could cover violations of public trust.

Senator West stated that hate crime statutes did not have to explicitly reference certain types of crimes, but rather function as a broader enhancement. Senator West noted that similar legislation could address crimes committed by public officials. Senator Sydnor stated that the Commission may be missing the point that the OMSP’s proposal was not exclusive to public officials, but rather a broader category of individuals who hold a position of trust. Judge Avery noted that any case involving sexual abuse may already include the component of trust.

Ms. Miller stated that the OMSP may have been referring to positions of trust that are specifically associated with an occupation, such as a teacher. Judge DeLeonardo noted that a broader position of trust enhancement may also be complicated because victim injury is already calculated in the guidelines, and that is why he was focusing on misconduct in office. He noted that the Commission may have some authority over the reclassification of misconduct in office and agreed with Mr. Finci that the Commission’s focus is not whether these changes would alter negotiations for pleas. Judge DeLeonardo stated that the Commission’s consideration should be that judges depart for these crimes, similar to how the Commission previously considered how judicial departures for child pornography might mean that the guidelines do not accurately reflect the nature of the crime.

Judge Avery asked if there was any research that might provide insight on cases that involve public officials but do not specifically include the charge of misconduct in office. Dr. Soulé responded that it is possible to isolate cases that were prosecuted by the OMSP, but that there may be a much larger pool of such cases that are prosecuted by other offices. Dr. Soulé noted that Ms. David can identify certain prosecutors that handle such misconduct cases, and that filtering by cases handled by this subset of prosecutors could provide additional insight. Dr. Soulé noted that this might not be the case in every office, but he is aware that Montgomery County has one prosecutor who handles those cases. Mr. Harvey stated that, in his office, misconduct is typically an ancillary charge, and these cases are typically referred to the OMSP if the sole charge is misconduct in office. Judge DeLeonardo stated that he was curious how other common law offenses are classified. Dr. Soulé noted that common law offenses are typically difficult to classify and referenced prior Commission conversations about affray offenses and the Crime Classification Task Force discussions.

Dr. Johnson asked if altering the offender score would be a legislative issue. He noted that there may be a parallel between a vulnerable victim and abuse of a position of trust. Judge Avery noted that “vulnerable victim” may already cover some aspects of a scenario that involves the abuse of a position of trust. Judge DeLeonardo stated that some crimes require a person to be in a position of trust, so we would essentially be double scoring this aspect. Dr. Johnson asked if this would also be true for crimes against a minor. Judge DeLeonardo noted that these concerns are why there may be consequences if the Commission applies an enhancement to all crimes, compared to only looking at



misconduct in office, which specifically applies to public trust. Mr. Harvey suggested that the issue be sent back to the Subcommittee, focusing only on how to classify offenses involving misconduct in office. Judge Avery suggested that MSCCSP staff brainstorm ways to present research on the classification issue. She noted that this issue requires significant time and consideration and appreciates having the opportunity to discuss these matters with the Commission.

Mr. Finci recommended that MSCCSP staff consider ways to collect data on cases involving the abuse of a position of trust. Judge DeLeonardo noted that data collection may be difficult, especially since most cases are within the sentencing guidelines and thus would not have a departure reason indicating the abuse of a position of trust. Judge Shaw stated that there may have to be an indicator on the worksheet to be able to identify offenses involving an abuse of a position of trust. Dr. Soulé stated that staff would discuss potential ways to identify these cases. This concluded the status report.

b. Review of seriousness categories for select offenses (Status report)

Ms. Bowles referred Commissioners to the memo titled *Review of Seriousness Categories for Select Offenses*. Ms. Bowles reiterated that this is a status report, and the Subcommittee was not requesting any action from the Commission at the time. She stated that Commissioners voted at the May 9, 2023, meeting that the upper guidelines limits for offenses with mandatory consecutive sentences shall stack with those of their underlying offense. Ms. Bowles noted Commissioners' previous concerns that this decision may double-penalize offenders convicted of (1) *Knowingly violating criminal law Article 5602 with fentanyl*, (2) *Use of a firearm in the commission of a felony or crime of violence subsequent*, and (3) *Use of an assault weapon in the commission of a felony or crime of violence, subsequent*. She stated that the Guidelines Subcommittee assessed data related to these offenses, and that a summary of these data was included at the end of the corresponding memo that was provided to Commissioners.

Given that the rule does not go into effect until February 1, 2024, the Guidelines Subcommittee decided to table the issue until there is sufficient data to evaluate the impact of the rule. Ms. Bowles noted that staff expect that sufficient data on the rule's impact on these three offenses cannot be collected until a minimum of two years after the rule goes into effect, upon which time the Commission could reevaluate the issue. Judge Avery asked if there were any questions or concerns. No further comments were made, and the status report concluded.

c. Continued review of sentencing guidelines departure reasons and proposed judiciary survey (Action Item)

Ms. Becker referred Commissioners to the memo titled *Continued Review of Sentencing Guidelines Departure Reasons and Proposed Judiciary Survey*. Ms. Becker noted that, during its November 15, 2023, meeting, the Guidelines Subcommittee continued its review of the listed sentencing guidelines departure reasons. Ms. Becker reminded Commissioners that the purpose of this review was to consider how the list of common departure reasons might be updated to more closely align with the reasons reflected in



the current guidelines data, provide greater insight into the circumstances of the case, and help the MSCCSP identify potential sentencing guidelines revisions.

The Subcommittee unanimously approved the distribution of a short survey of the Maryland Circuit Court Judiciary to gather feedback on the revision of these listed guidelines departure reasons. The Subcommittee provided feedback on a draft survey, staff updated the survey accordingly, and the survey was included in the corresponding memo for Commissioners to approve. Ms. Becker noted that the purpose of this survey is to solicit feedback from the Judiciary regarding the currently listed departure reasons and potential additions and provides space for additional comments or suggestions. Ms. Becker explained that the Subcommittee requests that the Commission approve this survey, and if approved, the MSCCSP Chair and staff would then distribute the survey to the circuit court judges at the Judicial Conference on April 20, 2024.

Dr. Soulé thanked Ms. Becker for the introduction and noted that the Commission's conversation regarding the listed departure reasons was initiated following the discussion of multiple animal offenses, and that these departure reasons have not been revised since they were created in 2001. He stated that Judge DeLeonardo and MSCCSP staff came up with the idea to solicit feedback from judges. Judge DeLeonardo suggested utilizing the upcoming Judicial Conference, co-chaired by Judge Middleton, to present the survey to judges. Judge Avery noted that Judge Middleton had to step out of the room briefly, but that she had been generous in supporting the presentation of the survey at the Judicial Conference.

Judge DeLeonardo pointed out that the Judicial Conference would also provide a good opportunity to express to judges the importance of collecting accurate departure information. He hopes to convey how much the Commission relies on the information they provide. Given that the Commission often receives requests for data to inform policy, the accuracy of this data is very important. Judge DeLeonardo expressed that departure information is useful for public transparency and for the Commission's understanding of departure trends.

Judge Avery reiterated that a presentation at the Judicial Conference would help highlight the importance of the guidelines to judges, especially given recent judicial turnover. She noted that this information is useful for the Commission's understanding of sentencing trends as the Commission seeks to reflect to judges the average sentence for various offenses. Judge DeLeonardo mentioned that there has been much discussion regarding judicial decision-making and noted that having information on whether judges follow the state's recommendation in sentencing would be useful. Judge Shaw requested that the presentation highlight that the survey is anonymous and confidential. She also suggested that the survey be distributed during the presentation instead of afterwards. Dr. Soulé encouraged others to provide similar feedback on the best format for the survey. Judge DeLeonardo noted that one of the reasons for presenting the survey at the Judicial Conference was to increase response rates. Judge Avery suggested identifying the percentage of judges that have responded to the survey on the screen during the



presentation. She then asked if the survey would be presented only to circuit court judges.

Judge Middleton stated that she is one of the co-chairs of the Judicial Conference and considered presenting the survey during either the business meeting or during the circuit court judges' breakout session. Judge Middleton asked how much time the presentation would take. Dr. Soulé stated that 25 minutes would be sufficient, starting with a brief introduction and then 5-10 minutes to complete the survey. Judge Middleton stated that she envisions this presentation going first, and that the Judicial Conference often utilizes surveys, so it should not be difficult to accomplish. Judge DeLeonardo also suggested an extra reminder to complete the survey after all the other presentations have been completed.

Judge Shaw suggested that district and appellate court judges need to understand the sentencing guidelines process. Therefore, she believed that there should be general information presented to everyone, not just circuit court judges, regarding the sentencing guidelines. Judge DeLeonardo said that it may be beneficial to have a discussion regarding the general importance of the guidelines process, but to push the survey amongst a smaller group of circuit court judges. Judge Shaw noted that some judges are not aware of the sentencing guidelines. Judge Avery noted that many district court judges also refer to the guidelines, even though they are not required in the District Court, so she agrees with Judge Middleton's suggestion that there be a short presentation from the Commission to the general body. Judge Avery noted that such specifics could be determined at a later point, and that the Commission is currently being asked to approve the administration of a survey to the circuit court judges.

Mr. Finci made a motion to approve the survey, which was seconded by several others. The motion was paused to address a question posed by Mr. Zaremba about how the survey results would be utilized. He noted that he was surprised the departure reasons do not include "youthful age," despite new precedent since 2001 regarding mitigating reasons such as substantial impairment or mental disability. Dr. Soulé affirmed that Mr. Zaremba was hitting on the key points and some of this was discussed by the Subcommittee. Dr. Soulé stated that the next step is to gather feedback from the Judiciary to consider when revising the departure reasons. He noted that "offender age" is a departure reason commonly written in by judges in the "other" category. Dr. Soulé said that the survey would inform proposed amendments at a subsequent meeting. Judge DeLeonardo highlighted that this survey is intended to inform the revision process and offer judges the opportunity to weigh in on these decisions. Judge DeLeonardo called for a vote, no Commissioners objected, and the survey was approved.

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 13, 2013, sentencing guidelines updates (Status report)

Dr. Soulé reported that the MSCCSP issued a new version of the Guidelines Offense Table and adopted corresponding updates in the Code of Maryland Regulations



(COMAR), effective November 13, 2023. These updates include the classification of new and amended offenses passed during the 2023 Legislative Session; the classification of three previously unclassified offenses; revised seriousness categories for subsequent drug offenses with a 40-year maximum penalty; and minor edits to the table. These updates were highlighted in the November 2023 Guidelines E-News that was distributed to the Commission's listserv on November 13, 2023.

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

In response to Judge Shaw's previous suggestion that sentencing guidelines training become mandatory for law clerks, Dr. Soulé reported that he presented at the September 18, 2023, Conference of Circuit Judges (CCJ) meeting to ask the CCJ to recommend to the Judicial Education Subcommittee that the sentencing guidelines training be mandatory for law clerks working with judges on the criminal docket. He reported that the CCJ voted unanimously to make this recommendation to the Judiciary Education Committee.

Dr. Soulé further shared that since the Commission's last meeting in September, the staff have conducted six (6) webinar training sessions. On September 6 and 15, 2023, the MSCCSP training coordinator, Katharine Pembroke, provided MAGS 101 training for law clerks and court staff. On September 20 and 29, 2023, MAGS and Sentencing Guidelines 101 sessions were completed for prosecutors, defense attorneys, and P&P investigators. Finally, Ms. Pembroke provided question and answer (Q&A) webinars for law clerks and court staff on November 3, 2023, and for general practitioners on November 8, 2023. Dr. Soulé noted that participants for the Q&A sessions were invited to submit questions in advance and given the opportunity to ask any guidelines or MAGS-related questions during the session. The Q&A sessions were designed to be short sessions to answer some of the more common questions that the Commission receives. Dr. Soulé commented that the staff believe this new format was well received.

Additionally, Dr. Soulé noted that he met with judges and court staff, as well as representatives from the county State's Attorney's Office and the local district public defender's office in two jurisdictions since the last meeting of the MSCCSP. Specifically, meetings were completed in Calvert County on October 19, 2023, and in Anne Arundel County on October 30, 2023. He stated that his goal is to meet with each jurisdiction every two to three years, as the meetings are a great opportunity to share sentencing guidelines data, discuss recent guidelines updates, review the work of the Commission, and to solicit feedback regarding the sentencing guidelines and the 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 in January, and considering that the Commission has multiple 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.

Dr. Soulé explained that the MSCCSP assesses the fiscal and operational impact of all legislation that impacts criminal sentencing policy. Legislation that creates new offenses and/or alters the penalties of existing offenses represents 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 to request 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.

Judge DeLeonardo reiterated that the Commission will convene and take a position only on legislation that directly impacts the underlying mission of the Commission (e.g., legislation that may task the Commission with projects and/or additional data collection). Though not that common, within the last few years, a few bills were introduced that impacted the overall function of the MSCCSP, and the Commission felt it was important to take a position on the proposed legislation. Thus, this legislative proposal policy was established.



Senator West commented that it is not uncommon for hearing dates to be set on short notice and suggested that staff continually check the website for hearing dates. Dr. Soulé replied that the staff will carefully monitor any potential hearing dates.

d. Progress report regarding the Task Force to Study Transparency Standards for State's Attorneys (Status report)

Dr. Soulé reminded Commissioners that during the 2022 Legislative Session, the Maryland General Assembly passed Senate Bill 763, titled the *Maryland Criminal Justice Data Transparency Act*. Among the many provisions in SB 763, the legislation required the MSCCSP to produce a new annual report regarding crimes of violence and required the MSCCSP to create and publish a data dashboard on the MSCCSP website to report these additional sentencing details about crimes of violence.

Additionally, SB 763 created the *Task Force to Study Transparency Standards for State's Attorneys*. Dr. Soulé explained that the Task Force is required to: (1) develop processes by which prosecutors can collect information and determine what information should be made public and what information may be kept private; and (2) examine any existing policies of State's Attorneys' offices across the State relating to the transparency of data, the charging of crimes, and sentencing. As the Executive Director of the MSCCSP, Dr. Soulé stated that he is one of the appointed members to this Task Force. The Task Force is co-chaired by two MSCCSP Commissioners, Senator Charles Sydnor and Delegate David Moon. The Task Force met four times starting on October 18, 2023, and most recently on November 28, 2023.

During these four meetings, Dr. Soulé reported that the Task Force received multiple informative presentations, including a presentation from the Maryland State's Attorneys' Association regarding existing data transparency policies and from individual prosecutor offices about their existing case management systems. Additionally, the Director of Reshaping Prosecution from the Vera Institute of Justice presented best practices and national standards regarding prosecutorial data transparency. He further noted that the Task Force heard from a group of researchers, including MSCCSP Commissioner, Dr. Brian Johnson, who are working in collaboration with Prosecutorial Performance Indicators (PPI) to analyze prosecutor data from the State's Attorneys' Offices in Baltimore City, Charles County, Frederick County, and Montgomery County.

At the most recent meeting on November 28, 2023, Dr. Soulé noted that the Task Force agreed to a proposal to create a statewide uniform procedure to collect data and a plan for providing one-time, start-up costs to either upgrade or implement more modern technology in local prosecutors' offices. The Task Force agreed on certain basic information state's attorneys should collect such as age and race and gender of victims and defendants. The Task Force also discussed collection of additional data points such as offense type, felony/misdemeanor indication, initial charge, final charge, cases declined, cases dismissed, reasons for case dismissal, cases resolved via plea versus trial, and whether diversion was offered.



Dr. Soulé relayed that co-chairs Sydnor and Moon have done a great job seeking input from a diverse group of voices and working to achieve consensus regarding the final recommendations. He further noted that the co-chairs indicated that they would meet with the Governor’s Office of Crime Prevention, Youth, and Victim Services to assess how to acquire money toward “one-time set up costs” for case management systems. The Task Force will report its findings and recommendations to the Senate Judicial Proceedings Committee and the House Judiciary Committee by December 31, 2023.

Senator Sydnor complimented Dr. Soulé on his accurate summary of the work of the Task Force. After having learned that not all State’s Attorney’s Offices use the same case management systems, he noted that he and Delegate Moon ultimately wanted to present recommendations that were basic. While transparency is still a goal, proper data collection is the first step. Senator Sydnor further noted that they had a fruitful conversation with the Governor’s Office of Crime Prevention, Youth, and Victim Services and will be circling back with the agency.

Dr. Johnson asked if there would be a mechanism for using the data generated by the various prosecutor offices to help inform the Commission’s data. He noted that Judge Philip Caroom had mentioned in a prior public comments hearing that one of the issues with the Commission’s data is that so many of the cases are negotiated pleas. Dr. Johnson stated that it would be useful to have additional information on the plea process to help further inform the Commission’s data.

Dr. Soulé stated that he had expressed to Senator Sydnor that he did not think the guidelines worksheet was the appropriate mechanism to collect additional information pertaining to charges that are dismissed, dropped, etc., given that the guidelines are not based on charges, but rather final convictions. That said, Dr. Soulé agreed that any prosecutorial data will be relevant to the Commission’s work, as it is important to understand how initial charging information can affect sentencing outcomes.

e. **Update on the MSCCSP annual report (Status report)**

Dr. Soulé stated that the MSCCSP 2023 annual report is due on January 31, 2024. The staff has begun preparations for the annual report and will distribute a draft for Commissioners to review on or about January 17, 2024. He asked that Commissioners send any feedback, questions, or concerns relative to the annual report directly to him. Staff will then review the feedback, incorporate necessary changes, and submit the report by the required due date of January 31. In conjunction, the report now requires the additional report on crimes of violence and update to the crimes of violence data dashboard.

6. Proposed 2024 MSCCSP Meeting Dates

Judge DeLeonardo presented the proposed meeting dates for 2024 and asked if there were any objections. Both Judge DeLeonardo and Dr. Soulé confirmed that the May and December meetings would be held in-person, while the July and September meetings will be held via videoconference. Seeing no objections, the proposed meeting dates for 2024 were adopted as follows:



- Tuesday, May 7, 2024 (in-person)
- Tuesday, July 9, 2024 (videoconference)
- Tuesday, September 10, 2024 (videoconference)
- Tuesday, December 3, 2024 (in-person)

7. Old Business

Judge DeLeonardo commented that MSCCSP staff had done a fabulous job with the race report that was previously released in July 2023 and asked if any feedback had been received in response to the report. Dr. Soulé responded that he has discussed the report with various individuals and researchers who were interested in the findings, but there was not yet any specific feedback or call to action regarding any of the recommendations presented in the report.

8. New Business and Announcements

Dr. Soulé stated that he was honored to have the opportunity to recognize Judge Avery who has served as the Vice-Chair of the MSCCSP since July 2015 and has served as Chair of the Sentencing Guidelines Subcommittee for the same eight-year duration. He noted that Judge Avery also previously served on the Sentencing Commission for four years from 2007 to 2010 in a prior role as the designated representative of the Secretary of the Maryland Department of Public Safety and Correctional Services.

Judge Avery completed two full four-year terms as the Vice-Chair of the MSCCSP and Chair of the Guidelines Subcommittee. Dr. Soulé explained that a new circuit court representative will likely be named in her place starting next year. Therefore, he wanted to thank Judge Avery for her significant contributions and her service.

Dr. Soulé specifically noted that Judge Avery's steady and thoughtful guidance of the Guidelines Subcommittee has been greatly appreciated over these past eight years as the Subcommittee tackled several important tasks including, but not limited to: 1) an assessment of racial differences in Maryland guidelines-eligible sentencing events; 2) the adoption of revisions to the sentencing matrices for drug and property offenders; 3) the adoption of revised scoring instructions for the juvenile record to reduce the impact of disparate commitment practices; and 4) a study on alternatives to incarceration and corresponding recommendations to enhance awareness about the availability of appropriate alternative sanctions.

On behalf of the Sentencing Commission and its staff, Dr. Soulé stated that he was honored to present a plaque in recognition of Judge Avery's 12 total years of service to the Commission and her eight years as the Vice-Chair of the Commission and Chair of the Guidelines Subcommittee. He noted that the Commission thanks her for the positive and lasting difference her service has made towards developing and maintaining fair and equitable sentencing policy in our state.

Judge Avery thanked Dr. Soulé and noted that the work of the Commission is extremely meaningful. Given the importance of this work, she encouraged newer Commissioners to engage and bring everything to the table. Judge Avery further commented that working



with Dr. Soulé and the staff has been the privilege of her career, and she will always be grateful for all that she has learned from the Commission.

Judge DeLeonardo added that an incredible amount of work goes on behind the scenes via the Guidelines Subcommittee and praised Judge Avery’s ability to successfully lead it for so many years. He further noted that Judge Avery has always held a dedicated and true center regarding the purpose of the Commission and the work surrounding it.

The meeting was adjourned at 7:30 p.m.