



Minutes

Maryland State Commission on Criminal Sentencing Policy
Maryland Judicial Center
Annapolis, MD 21401
December 6, 2022

Commission Members in Attendance:

Honorable Brian L. DeLeonardo, Chair
Honorable Shannon E. Avery, Vice-Chair
Honorable J. Sandy Bartlett
Richard A. Finci, Esq.
Secretary Robert L. Green
Melinda C. Grenier
Robert H. Harvey, Jr., Esq.
Brian D. Johnson, Ph.D.
Alethea P. Miller
Honorable Michelle R. Saunders
Kyle E. Scherer, Esq.
Honorable Melanie M. Shaw
Lisa M. Spicknall-Horner
Honorable Charles E. Sydnor, III
Honorable Christopher R. West
Carrie Williams, Esq., *representing Attorney General Brian E. Frosh*
Donald Zaremba, Esq., *representing Public Defender Natasha Dartigue*

Staff Members in Attendance:

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

Visitors: None.

1. Call to order

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

2. Declaration of quorum

The meeting began at 5:34 p.m. A quorum had already been established.

3. Approval of minutes from September 13, 2022, MSCCSP Meeting

The minutes were approved as submitted.



4. Guidelines Subcommittee Report – Judge Shannon Avery

Judge Avery began by explaining that the Guidelines Subcommittee is the primary working group of the Commission. She noted that she has chaired the Subcommittee for several years and that additional membership includes Rick Finci, Senator Sydnor, and Robert Harvey. She explained that issues are first presented to and discussed by the Subcommittee. The members then vote on recommendations, which are subsequently brought forth to the Commission. She reported that the Guidelines Subcommittee last met on November 16, 2022, but given that there was not a quorum at the November 16 meeting, the Subcommittee is not presenting any issues that require action. Judge Avery then turned the discussion over to Dr. Soulé to provide a brief overview of the agenda items.

Dr. Soulé thanked Judge Avery and reiterated that since only two of the four Subcommittee members were able to participate on November 16, 2022, the plan is to solicit feedback from the full Commission regarding the three issues listed on the agenda, which will then be further discussed by the Subcommittee during its next meeting.

a. Review of guidelines for cases involving mandatory consecutive sentences (Status Report)

Dr. Soulé indicated that Sarah Bowles from the staff would address the first agenda item, which is a review of guidelines for cases involving mandatory consecutive sentences. Ms. Bowles referred Commissioners to the memo labeled *Review of Guidelines for Cases Involving Mandatory Consecutive Sentences* and noted the Guidelines Subcommittee first discussed this topic at its August 30, 2022, meeting. At that time, the Guidelines Subcommittee requested that the staff analyze the sentencing guidelines data pertaining to sentences for offenses involving mandatory consecutive sentences. The present memorandum includes the results of those analyses.

Ms. Bowles explained that over the years, including most recently on July 12, 2022, Commission staff has received inquiries from practitioners as to why the guidelines do not stack in situations where one sentence is mandated to run consecutive to another sentence. In response to these inquiries, Commission staff has identified ten offenses that require judges to run a sentence consecutive to another offense for which the offender is being sentenced. These offenses are listed in Appendix 1 of the corresponding memorandum.

Ms. Bowles continued by explaining that in other sentencing scenarios involving multiple convictions, the MSCCSP guidelines employ a “stacking” rule. For example, a stacking rule applies in a single sentencing event involving two or more seriousness category I or II offenses. In these scenarios, both the lower and upper guidelines limits for the seriousness category I or II offenses stack. She further noted that stacking also occurs when there is a criminal event with multiple victims and not more than one seriousness category I or II offense (i.e., the multiple victim “stacking” rule). In these cases, only the upper limits of the guidelines ranges stack for those offenses involving different victims.

Ms. Bowles commented that arguably, a stacking rule should also apply in scenarios where a statute requires an offense to run consecutive to another offense in the criminal event, to reflect the intent of the legislature that the sentences are to run consecutively.



There are descriptive data to support this proposed rule. She elaborated by noting that sentencing guidelines data, as noted beginning on page 4 of the memo, reflect that overall, “above” departures are more common in sentencing events involving offenses with mandatory consecutive sentences when compared with all sentencing events, and the median value for the guidelines applicable sentence as a percentage of the guidelines’ midpoint is higher in sentencing events involving offenses with mandatory consecutive sentences.

From a policy standpoint, applying the stacking rule to mandatory consecutive sentences may make sense. As a practical matter, however, doing so is complicated by the fact that some statutes requiring mandatory consecutive sentences employ different language than others. Some offenses involve some type of enhancement and provide that the penalty/sentence imposed should be consecutive to the sentence for the offense that forms the basis for the enhanced crime. In contrast, the sentencing provisions for other crimes provide a more general and ambiguous statement regarding the mandatory consecutive nature of the sentence, stating that the sentence shall be consecutive to “any other sentence imposed,” or to “any other sentence imposed under any other provision of law.” It is unclear whether such language would apply only to sentences within the same criminal event.

In the interest of creating consistency, uniformity, and clarity in the application of the rule, Ms. Bowles explained that Commission staff recommends the Commission consider a stacking rule that would apply only to sentences within the same criminal event. The question also arises whether both the lower and upper limits of the guidelines recommendations should stack, or whether just the upper limits should stack. She further noted that both approaches are worth considering. Accordingly, in the proposed revisions, Commission staff provides two alternative revisions to the guidelines, one of which stacks only the upper guidelines limits of the offenses, and one of which stacks both the lower and upper limits.

With these considerations in mind, Ms. Bowles noted that the Commission may wish to revise the Maryland Sentencing Guidelines Manual (MSGM) and Code of Maryland Regulations (COMAR) to account for offenses with mandatory consecutive sentences. If the Commission wishes to explore this option, staff proposes the revisions contained in the memorandum. Ms. Bowles concluded by noting that the Commission may consider asking the Guidelines Subcommittee to review these proposed revisions and offer a recommendation on whether to adopt them. She then turned the discussion over to the Commission.

Judge Avery asked if Ms. Bowles would provide an example of how the guidelines ranges would be impacted by the two sets of proposed changes. Ms. Bowles reviewed the example included on pages 9 and 10 of the meeting memorandum. In the example, the defendant was convicted of *Committing a Crime of Violence (COV) in the Presence of Child* (guidelines range 2Y-5Y), *Robbery* (guidelines range 3Y-7Y), and *Assault 2nd Degree* (guidelines range 2Y-5Y). Under the current guidelines rules, the overall guidelines range equals the highest of the lower guidelines limits and the highest of the upper guidelines limits, which in this example is 3Y-7Y. Under the proposed revision to stack the upper guidelines limits, the overall guidelines range is 3Y-12Y. Specifically, the



upper limit of the overall guidelines range is determined by adding the upper guidelines limits for (1) the offense whose sentence is statutorily required to run consecutive to one or more other sentences in the criminal event (*Commit COV in Presence of Child*) and (2) the eligible other offense with the highest upper guidelines limit (*Robbery*). In comparison, under the proposed revision to stack both the lower and upper guidelines limits, the overall guidelines range is 5Y-12Y. Specifically, the lower and upper limits of the overall guidelines range are determined by adding the lower and upper guidelines limits for (1) the offense whose sentence is statutorily required to run consecutive to one or more other sentences in the criminal event (*Commit COV in Presence of Child*) and (2) the eligible other offense with the highest upper guidelines limit (*Robbery*).

Dr. Soulé reiterated that the two proposals attempt to account for these more serious sentencing scenarios by either adding the upper guidelines limits or adding both the lower and upper guidelines limits, rather than the overall guidelines range being equal to the guidelines for one single offense.

Judge Avery noted that the Subcommittee discussed the issue but did not come to a consensus. She asked if any of the Subcommittee members wished to weigh in. Mr. Finci shared his observation that none of these statutes require an additional sentence (i.e., mandatory incarceration). They require consecutive sentences, but those consecutive sentences could be suspended sentences.

Judge Avery added that some of the offenses are rare, and thus the MSCCSP does not have a lot of data to describe how judges are sentencing. Dr. Soulé agreed that the sample sizes for the offenses are small, but the available data do indicate that judges are treating these cases as more serious. Specifically, judges are more likely to depart above the guidelines in these cases when compared with cases not involving these consecutive sentences.

Judge DeLeonardo indicated that with limited data, legislative intent becomes an important factor. If jail is not a requirement, then maybe the lower end of the guidelines should remain unaffected; but if the upper end of the guidelines also remains unaffected, then it is as if the offense requiring the consecutive sentence has no impact.

Judge Shaw questioned whether in cases involving *Commit COV in Presence of Child*, the child would also be considered a victim and thus that would impact the calculation of the guidelines with respect to adding points for the child as a vulnerable victim. Judge DeLeonardo commented that it is possible that the child would not be considered a victim if the child is not on the receiving end of the crime of violence (e.g., domestic violence with the child present).

Dr. Soulé encouraged Commissioners who may have additional thoughts on the issue in the interim to share them with him or Judge Avery so that they can be considered when the Subcommittee resumes its deliberation.

b. Review of crimes against animals and the scoring of the multiple victim stacking rule (Status Report)

Dr. Soulé stated that Katharine Pembroke from the staff would address the second agenda item. Ms. Pembroke referred Commissioners to the memorandum labeled *Crimes Against*



Animals and the Victim “Stacking” Rule. Ms. Pembroke noted that MSCCSP staff has received multiple questions involving animal cruelty cases, specifically whether an animal meets the criteria for a “victim” for the purposes of applying the multiple victim “stacking” rule (MVSR) in a criminal event with multiple counts of animal cruelty, each involving a different animal.

Presently, Chapter 10.1 of the MSGM provides the following instructions for the MVSR:

“When there is a criminal event with multiple victims and not more than one seriousness category I or II offense, the person completing the sentencing guidelines worksheet should add the highest of the upper limits of the guidelines ranges for each victim to find the correct overall range for the criminal event.”

In a scenario in which there are multiple counts of animal cruelty, each involving a unique animal and stemming from the same criminal event (with not more than one seriousness category I or II offense), Ms. Pembroke explained that the question as to whether animals shall be treated as “victims” for the purposes of applying the MVSR is an important one. The application of the rule could affect the calculation of the overall guidelines range considerably, depending on the number of unique animals involved.

Maryland law contains slightly varying definitions of the term “victim,” depending on the context and nature of the applicable statute. Ms. Pembroke stated that most definitions found in Maryland law, however, specifically cite references to a “person” or “individual” and do not outwardly encompass animals.

Relevant case law stemming from other states draws mixed conclusions regarding the inclusion of animals in statutory references to victims. Ms. Pembroke referred Commissioners to pages 2 through 4 of the memorandum that highlight various case law. In some instances, the relevant appellate court has recognized animals as constituting a separate crime victim for the purposes of merging, while in another case, a deadly weapon finding was overturned, stating “the evidence is insufficient to support a deadly weapon finding under circumstances in which the sole recipient or being against whom a deadly weapon was used or exhibited was a nonhuman.” *Prichard v. State*, 533 S.W.3d 315, 331 (2017).

MSCCSP staff analyzed Maryland sentencing guidelines data for sentencings involving crimes against animals to see if the data provide any descriptive insight as to how cases involving crimes against animals are being scored in the guidelines and subsequently sentenced. Ms. Pembroke directed Commissioners to page 6 of the memo, noting that Table 1 illustrates, from 2017 through 2021, there were 108 sentencing events, including 241 convictions, for crimes against animals. The most common crimes against animals were animal cruelty, followed by aggravated animal cruelty, dogfighting, and cockfighting. Approximately 31% of the 108 sentencing events involving crimes against animals involved multiple counts of crimes against animals. Sentencing events involving multiple counts of crimes against animals were substantially more likely to involve a sentence departure above the overall guidelines range relative to those involving a single count (24% versus 8%, respectively). Ms. Pembroke advised that no sentencing event involving multiple counts of crimes against animals applied the MVSR.



Of the 33 sentencing events involving multiple counts of crimes against animals, approximately 73% imposed consecutive sentences for two or more of the counts of crimes against animals. Taken together, Ms. Pembroke explained that these findings suggest that judges are more likely to account for each of the unique animals involved in separate counts of animal cruelty. Given these findings and given that the sentencing guidelines are intended to be primarily descriptive, the Commission may be justified in instructing practitioners that the MVSR applies to animals as well as to humans. Applying the MVSR in sentencing events involving a criminal event with multiple counts of crimes against animals would reflect judges' current practices and provide judges with the option of imposing consecutive sentences without departing from the guidelines. Applying the MVSR would also maintain the lower guidelines limit as it is currently calculated.

Given recent inquiries regarding the inclusion of animals as they relate to the MVSR, Ms. Pembroke proposed that the Commission may wish to take one of the following actions:

1. Clarify the instructions for the MVSR to explicitly include animals.
2. Clarify the instructions for the MVSR to explicitly exclude animals.
3. Take no position on the issue and continue to recommend that judges make victim determinations based on the facts in each individual case.

Potential revisions to the MSGM and Code of Maryland Regulations (COMAR), based on actions 1 or 2 are provided on pages 7 through 9 of the memorandum.

Lastly, Ms. Pembroke noted that, given the recent inquiries regarding the definition of a victim as it relates to an animal, the Commission staff has included an additional related action for the Commission to consider, beginning on page 9 of the memo. She explained that, though infrequent, staff has also been asked whether an animal would qualify for victim injury and/or special victim vulnerability points on the offense score when a case involves an animal whose injury or death was directly linked to the conduct of the defendant.

Ms. Pembroke noted that crimes against animals are currently classified as property offenses for guidelines purposes and would, therefore, not require an offense score calculation. The question regarding victim injury points arose following several scenarios in which the defendant was also convicted of a co-occurring person offense, for example, *Wearing or Carrying a Concealed Dangerous Weapon* (as defined under CR, § 4-101(c)(10)), which would require an offense score calculation.

At this point in time, Ms. Pembroke reiterated that staff is only asking the Commission to consider whether an animal meets the criteria for a "victim" for the purpose of applying the MVSR and will defer to input from the Commission to guide whether the Subcommittee should proceed with discussing the additional considerations addressed in the second half of the memorandum. She then turned the discussion over to the Commission.

Judge Avery noted that no action was taken on this issue during the Subcommittee meeting, and she welcomed any viewpoints from the Commission.



Ms. Miller inquired as to whether the animal would be considered a victim in a domestic violence situation if harm was brought to an emotional support/service animal. She further noted that support/service animals impact many aspects of an individual's life, as they may assist them in going to work school, and thus contribute to their financial well-being.

With regards to the stacking and sentencing considerations, Judge Avery commented that she tends to look to the unit of prosecution with respect to animal involvement. She noted that as a judge, her personal viewpoint regarding the subject matter should not be as prominent as the structural issues.

Ms. Miller clarified that she was asking if there were scenarios in which an animal would be seen as a victim. Judge Avery responded that animals are not considered people in Maryland law, and that her viewpoint is the status quo on the position.

Mr. Zaremba stated that he believes there is a clear expression of legislative intent, in that "victim" is defined multiple times in the law as being a "person" or "individual." He further noted that the term "animal," as defined in CR, § 10-601(b), refers to a "creature, except a human being." Therefore, he again expressed that there appears to be a clear expression of legislative intent.

Mr. Harvey stated that he believes this topic is worthy of further discussion among the Subcommittee, and he noted that his office has recently prosecuted two or three dogfighting operations. He stated that if the animals were to be treated as victims, there would be 20-30 victims, and the guidelines would increase significantly. He stated that he was troubled by including an animal as a victim, but he would like to confer with the animal cruelty prosecutor in his office.

Senator West noted that regarding the two memoranda just presented, there appears to be an issue of ambiguity in the statute. He inquired as to whether the Commission has ever decided to send a memo to the General Assembly, or appropriate committees within the General Assembly, explaining the ambiguity. Recommended language could then be proposed, with a request explaining that it would be helpful if the General Assembly could pass a bill clarifying the ambiguity.

Dr. Soulé replied that he does not believe the Commission has ever sent such a memo, but that he does not believe the Commission is precluded from doing so.

Judge Avery stated that this affects advocacy. She explained a progression beginning with the statute itself. Then, cases go up on appeal and there is a judicial review that encompasses legislative intent based on the wording of the statute. Judge Avery stated that if the Commission were to ask for legislative intent, she believes that the Commission would be asking the legislature to take action that is different from whatever the status quo is. That, in effect, would create an advocacy, as we would be asking the legislature to make some change.

Senator Sydnor agreed with Mr. Zaremba's earlier point in that the terms "victim" and "animal" seem to be clearly defined.

Senator West expressed that there are two ways to go about this. First, the Commission could adopt an interpretation, which could result in a lawsuit, alleging that the



interpretation is incorrect. The lawsuit would ultimately be resolved by the courts, at which point the General Assembly could decide if they like the resolution by the courts. If not, they could consider whether a statute should be passed to change it. He noted this would be expensive to the litigants, and instead, suggested it might be helpful for the General Assembly to be made aware of this type of ambiguity.

Judge DeLeonardo expressed concern about the Commission asking for an opinion on legislative intent, as that would raise the question as to who would be giving the opinion. He noted that by looking at the purpose of the statute, it accomplishes the same thing as what the courts would be doing. He further noted that the Commission does deal with a level of ambiguity with some frequency. For example, when a new crime is created, no one is telling the Commission how it should be classified. Rather, the Commission goes through its own classification process. Lastly, Judge DeLeonardo reiterated that the Subcommittee did not take a formal position on this issue.

Dr. Johnson commented that these types of animal related offenses are already categorized as property offenses. As such, it suggests implicitly that animals are not intended to be victims. If the Commission did decide to treat animals as victims, he believes it would raise a lot of questions regarding the scoring of vulnerability of the animal.

Mr. Finci stated that he floated an idea during the Subcommittee meeting. He stated that he believes everyone can agree that the gravity of animal cruelty offenses increases by the number of animals killed or injured. He suggested that the Commission create an upward departure consideration for multiple animals in an animal cruelty case. This would help recognize the data suggesting that there tend to be above guidelines sentences when there are multiple counts of animal cruelty.

Ms. Miller commented that victims have questioned their support animals, and that she did not know if support animals were seen as an extension of the individual, or perhaps as a pet. She stated that there was no need to take this to the legislature, though she believes the question may get there soon enough.

Judge Avery stated that there has been a lot more recognition of the risks posed by offenders who harm animals, and the Judiciary is in the midst of more research in this area.

Judge DeLeonardo thanked the Commission for their feedback and noted this will be back as an action item at the next meeting.

c. **Review of seriousness categories for subsequent drug offense convictions (Status Report)**

Dr. Soulé stated that he would present the third agenda item and referred Commissioners to the memorandum labeled *Review of Seriousness Categories for Subsequent Drug Offense Convictions*. He noted that MSCCSP staff recently received an inquiry from an assistant state's attorney (ASA) questioning why the sentencing guidelines for subsequent drug offenses penalized pursuant to Criminal Law Article (CR), § 5-608(d) are treated the same as first-time offenses penalized pursuant to CR, § 5-608(a). Both are classified as a seriousness category III-B offenses, even though a first offense has a maximum penalty



of 20 years imprisonment, while a fourth or subsequent offense pursuant to § 5-608(d) has a maximum penalty of 40 years imprisonment. The ASA questioned why a subsequent offense, which has a greater statutory maximum penalty, is treated the same as a first offense.

Dr. Soulé explained that the sentencing guidelines classify first offenses enumerated in CR, § 5-608 and CR, § 5-609 the same as subsequent offenses, even though subsequent offenses carry more severe punishments than first-time offenses. Narcotics and hallucinogenic offenses are seriousness category III-B offenses, while MDMA offenses are classified as seriousness category III-A offenses. The lack of distinction in guidelines classification between subsequent drug offenses and first-time drug offenses is a relatively recent development. Prior to the enactment of the Justice Reinvestment Act (JRA), the guidelines recommendations for subsequent offenses were higher than those for first-time offenses due to the mandatory minimum sentences associated with subsequent violations under §§ 5-608(b), 5-608(c), 5-608(d), 5-609(b), 5-609(c), and 5-609(d).

Dr. Soulé provided an example, noting that prior to the JRA, the guidelines recommendation for a fourth or subsequent offense under § 5-608(d) or § 5-609(d) would have been 40 to 40 years, whereas the guidelines for a first offense would have been calculated using the drug offense matrix, which determines the guidelines recommendation based on the offense seriousness category and offender score. Because the mandatory minimums existed prior to the JRA, the minimums would have replaced the sentencing guidelines range. Now, post-JRA, the guidelines recommendations are the same for subsequent offenses as they are for first-time offenses, since they both have the same seriousness category and there is no longer a mandatory minimum for subsequent offenses that results in increased guidelines recommendations for subsequent drug offenses.

Consequently, Dr. Soulé noted that the staff believes the seriousness categories (and corresponding guidelines) for offenses with different maximum sentences (e.g., a 20-year maximum sentence for a first offense versus a 40-year maximum sentence for a fourth or subsequent offense) warrant review. Specifically, the staff recommends reclassification for the five subsequent offenses noted in the table on page 5 of the memorandum. The proposed revisions increase the seriousness category for each of these subsequent offenses to align with comparable offenses with corresponding higher maximum penalties.

Finally, as noted in the memorandum, Dr. Soulé explained that an analysis of guidelines sentencing practices indicates that circuit court judges tend to sentence drug offenders above the guidelines more frequently in cases involving subsequent offenses than cases involving first-time offenses. In summary, the staff recommends the reclassifications proposed on page 5 of the memo, because these classifications will provide more consistency with comparable offenses and to differentiate the guidelines calculations for first and subsequent offenders. Dr. Soulé then turned the discussion over to the Commission.



Mr. Finci clarified that a subsequent offense is defined as a second offense where there is an appropriate notice issued under the Maryland rules before sentencing in the case, and not simply that the defendant has a prior conviction.

Mr. Zaremba observed that under CR, § 5-608 there is little difference in the maximum penalty for a 1st/2nd distribution offense (20Y) and a 3rd offense (25Y). He stated also that if a 4th distribution offense was to be assigned a seriousness category II, it would “blow up” the progression of the guidelines. He noted, for example, that the current guidelines range for a 4th offense for a defendant with an offender score of 5 (i.e., a major record) is 1Y-6Y. If the seriousness category was changed from III-B to II, the guidelines range would jump up to 26Y-30Y. Further, under the proposed changes, the jump in the guidelines range for a 3rd offense to a 4th offense is similarly out of proportion (2Y-8Y to 26Y-30Y). Mr. Zaremba explained that a 4th distribution offense is not comparable to the drug kingpin offense, which is a seriousness category II offense. The drug kingpin statute concerns individuals who are responsible for a criminal organization. Further, the statute specifies a 20-year mandatory minimum, while the penalty for subsequent distribution no longer includes a mandatory minimum. Mr. Zaremba suggested that a category III-C might be more appropriate and less of an outlier than a category II for a 4th offense.

Delegate Bartlett noted that there has been discussion of legislative intent, but she wonders what the Commission’s intent was following JRA. Understanding the Commission’s intent might help to understand why the guidelines are what they are now.

Judge DeLeonardo once again thanked the Commission for their feedback and noted this will be back as an action item at the next meeting.

5. Executive Director Report – Dr. David Soulé

Dr. Soulé stated that he had five items and one announcement to report as part of the Executive Director Report.

a. November 14, 2022, sentencing guidelines revisions and release of MAGS 11.0 (Status report)

Dr. Soulé began by reminding Commissioners that at the July 12, 2022, meeting, the Commission reviewed three separate topics that resulted in votes to approve corresponding sentencing guidelines updates. First, the Commission revised the guidelines worksheet collection protocol for non-original sentencing events to provide consistency by limiting the collection of sentencing guidelines worksheets for three-judge panel reviews to those involving a crime of violence and to clarify the definition of “reconsiderations.” Second, the Guidelines Offense Table was updated to reflect the classification of new offenses passed during the 2022 Legislative Session. Finally, revisions were adopted to clarify the definition of “explosives” as it pertains to the assignment of weapon presence points in part C of the offense score. Dr. Soulé explained that each of these three updates were promulgated through the COMAR review process after the Commission’s July meeting and were subsequently adopted effective November 14, 2022. The Commission released an updated version of the Maryland Automated Guidelines System (MAGS), Version 11.0, to implement these respective revisions and updates.



b. Sentencing guidelines trainings/feedback meetings (Status report)

Dr. Soulé stated that the second item he wanted to report was an update on sentencing guidelines trainings and feedback meetings. Since the last Commission meeting in September, the Commission staff completed three webinar trainings. On September 16, 2022, staff provided an orientation and training for judicial law clerks and other judicial staff. On September 30th, a “MAGS 101” webinar was provided for prosecutors and Parole & Probation agents who initiate sentencing guidelines worksheets. On October 6, 2022, staff completed a sentencing guidelines orientation and guidelines calculator tool training for public and private defense attorneys.

Finally, Dr. Soulé reported that he met with the judges in St. Mary’s County on November 23, 2022, as his goal is to meet with the judges in each of the 24 jurisdictions every two to three years. He noted that the feedback meetings are an excellent opportunity to review sentencing guidelines data, discuss recent guidelines amendments, review the recent activities of the Commission, and finally, to ask the judges to share their input regarding the sentencing guidelines. Many of the issues that are ultimately brought forth to the Commission stem from these feedback meetings.

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

In 2019, the Commission adopted a protocol for responding to legislative proposals. Given that the General Assembly session starts next month and considering that the Commission has multiple new Commissioners appointed since this time last year, Dr. Soulé stated that he thought it would be helpful to review the protocol.

During the past few legislative sessions, multiple bills with the potential to affect the Commission were introduced. Given that the Commission does not meet typically during the legislative session, Dr. Soulé reported that the Commission adopted a policy to guide future responses to legislation that directly affects the sentencing guidelines and/or the operations of the Commission. He referred Commissioners to the distributed document titled *Policy for the MSCCSP Response to Legislative Proposals*.

Dr. Soulé reviewed the Commission’s following policy:

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 conference call 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. Furthermore, the MSCCSP website now includes an announcement that the Commission may need to meet on short notice when the General Assembly is in session.



4. The MSCCSP will adopt the majority position of the voting Commission members, provided that a quorum of Commission members participates in the conference call.
5. 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.
6. 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.
7. 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 explained that the Commissioners will be contacted regarding a meeting date, should any relevant bill arise during the forthcoming legislative session.

Judge DeLeonardo clarified that when he previously served on the Commission, there was no formal policy with regards to responding to relevant legislation that directly impacted the function of the Commission, and thus, this policy was adopted. He explained there is always going to be legislation that affects the sentencing guidelines. For example, new crimes being created and/or the decrease of a statutory maximum for an offense. However, he does not believe this policy was developed to address that type of legislation even though the legislation may affect the guidelines. Rather, the focus of this policy should be legislation that directly impacts how the Sentencing Commission operates (e.g., legislation that may task the Commission with projects and/or additional data collection). Judge DeLeonardo explained that it is not a great position if the Commission does not weigh in on the impact of this type of proposed legislation.

Dr. Soulé thanked Judge DeLeonardo for making the distinction between legislation as it relates to the Commission and commented that in response to the aforementioned bills that propose a new offense, decrease a statutory maximum, etc., the Commission does provide data in the form of a fiscal information statement to the Department of Legislative Services.

If Commissioners know of any legislation being introduced that could impact the operation of the Commission, Judge DeLeonardo asked that they share that legislation with the staff in advance, so that the process does not become rushed.

Delegate Bartlett asked if the Commission has ever presented a briefing for the House Judiciary Committee or Senate Judicial Proceedings Committee in the General Assembly and commented that she believes it may be time for another briefing. She noted that she may mention it to the Chair in case it's possible for a briefing to be scheduled.

Dr. Soulé explained that he has done briefings for both the House Judiciary Committee and the Senate's Judicial Proceedings Committee in the past, and he would be happy to present another briefing if requested.



d. Update on the MSCCSP annual report (Status report)

Dr. Soulé reminded Commissioners that the Commission's 2022 annual report is due on January 31, 2023. The staff has begun preparations for the annual report and will distribute a draft for Commissioners to review on or about January 14, 2022. Dr. Soulé asked Commissioners to send their feedback, questions, or concerns relative to the annual report directly to him. The staff will then review the feedback, incorporate changes that are needed, and submit the report by the required due date of January 31st.

e. Data dashboard for crimes of violence and website data extraction tool (Status report)

As discussed during prior Commission meetings and in the public comments hearing presentation, Dr. Soulé reminded Commissioners that Senate Bill (SB) 763, titled "*Public Safety and Criminal Procedure – Collection, Reporting, and Publication of Criminal Case and Prosecutorial Information (Maryland Criminal Justice Data Transparency Act)*" was passed during the 2022 Legislative Session. Among other provisions, including the creation of a task force to study transparency standards for State's Attorneys, SB 763 requires the Commission to add to its annual report a new section providing additional sentencing details about crimes of violence.

Specifically, Dr. Soulé noted that this report will provide information, disaggregated by judicial circuit, to include:

- The number and percentage of sentencing events involving a crime of violence;
- The number and percentage of sentencing events involving a crime of violence that resulted in a departure from the guidelines;
- The number and percentage of departure reasons cited for sentencing events that resulted in a departure from the guidelines; and
- The average total sentence, the average non-suspended sentence, and the average percentage of the total sentence that was suspended for sentencing events involving a crime of violence.

Dr. Soulé continued by explaining that SB 763 also requires the Commission to create a data dashboard to be displayed on the MSCCSP website to report this information on sentencing events involving a crime of violence. The Commission's 2022 annual report that is due on January 31, 2023, is the first annual report that requires this additional information. He further noted that the staff has been working on the data dashboard and the plan is to publish the dashboard on the MSCCSP website to correspond with the January 31, 2023, annual report due date.

In addition to the data dashboard, the Commission staff is also working to create a data extraction tool on the MSCCSP website that will assist in making the sentencing guidelines data even more accessible. Dr. Soulé explained that the Commission's sentencing guidelines data are already publicly available. Commission staff routinely receive and respond to requests for data from a variety of individuals, including



legislators, judges, prosecutors, defense attorneys, victims, defendants, academics, and media personnel.

Currently requests are submitted to the MSCCSP using an online request form on the MSCCSP website. Upon receipt of each request, the MSCCSP research director, Stacy Najaka, follows up with the requester, confirming that the request was received, and obtains any needed clarification on the specifics of the request. Once the requested data file has been generated, it is emailed to the requester along with the data codebook and a brief memo describing the provided files.

Dr. Soulé explained that the goal is to create a data extraction tool that will streamline this process and allow requesters to download the sentencing guidelines data directly from the MSCCSP website. Additionally, the tool will permit requesters to filter the data by select criteria, including sentencing date, jurisdiction, and offense. Once the criteria have been specified, the tool will generate an Excel file download for the requester. The data extraction tool is expected to make the publicly available sentencing guidelines data even more easily accessible than is currently the case, while also reducing the time spent by staff responding to individual data requests.

Dr. Soulé further clarified the distinction between the data dashboard and data extraction tool. The data dashboard will reflect the data points selected by the legislature, whereas the data extraction tool will allow requesters to download all publicly available guidelines data or a subset of the data.

Judge DeLeonardo asked if the data extraction tool would be limited to registered MAGS users, or if it would be available to the public. He also asked if the data was broken down by circuit, similar to the dashboard.

Dr. Soulé responded that there will be no restrictions with regards to accessing the data extraction tool, as the Commission's data are currently available to the public. He also clarified that the data would not include individual identifiers and that it would be an aggregate dataset. Requesters would be able to filter by jurisdiction.

Judge Avery asked if the data extraction tool would include an introduction to the data, where requesters would have to acknowledge that they understand where the data are coming from before receiving access. She noted that if a requester were inclined to use the data for any mischief, at least the Commission has asked that individual to acknowledge that they understand the source of the sentencing guidelines data.

While the tool is still in development, Dr. Najaka explained that staff has asked the programmer to include a statement, whereby downloading the data, the individual acknowledges the source of the data, the data limitations, and that the user would not identify individuals within the data.

Secretary Green suggested making available a data dictionary, and he expressed that the Department of Public Safety and Correctional Services (DPSCS) has found their data dictionary to be invaluable with regards to their data dashboard releases.



Dr. Najaka responded that a data dictionary is currently posted on the MSCCSP website. Dr. Soulé expressed his appreciation to DPSCS, specifically Angelina Guarino, Executive Director for the Office of Data Development, noting that she has been a tremendous resource in offering guidance for the development of the MSCCSP data dashboard.

Judge Avery inquired as to whether the DPSCS data dashboard has an interface that allows for a data download. Secretary Green explained that currently, the DPSCS data dashboard has limited connectivity to a full data download and dictionary, though he noted that a future version may allow for that. As of now, the dashboard was designed to essentially allow users to “drill down” to a relevant subset of data in 90 seconds or less.

f. Announcement: Update on Research Analyst Position (Status report)

As previously reported, the MSCCSP was fortunate to receive additional funding to add one full time staff member as the result of the adoption of SB 763 from the 2022 legislative session. Dr. Soulé provided an update and stated that he was pleased to share that the MSCCSP has completed the application review process and the new research analyst position was offered to and accepted by a qualified candidate. The new hire is scheduled to start work on January 4, 2023, and Dr. Soulé looks forward to introducing her at the next Commission meeting.

6. Proposed MSCCSP meeting dates for 2023 (Action Item)

Judge DeLeonardo presented the proposed meeting dates for 2023 and asked if there were any objections. Seeing no objections, the proposed meeting dates for 2023 were adopted as follows:

- Tuesday, May 9, 2023
- Tuesday, July 11, 2023
- Tuesday, September 12, 2023
- Tuesday, December 5, 2023

7. Old Business

None.

8. New Business and Announcements

Judge DeLeonardo acknowledged Carrie Williams, who is representing Attorney General Brian E. Frosh, and wished her well in her new professional endeavors. He noted that a new representative from the Attorney General’s Office will be designated for future Commission meetings.

The meeting was adjourned at 6:55 p.m.