



Criminal Justice Transparency and Related Matters

Presentation to the

◆ **House Judicial**

◆ **Transparency Workgroup**

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Russell Butler

- ◆ Past Chair of the Maryland State Bar Association's Criminal Law and Practice
- ◆ Past Chair of the American Bar Associations' Victims Committee
- ◆ 34 years as a Maryland lobbyist
 - 1999 Ch. 648 - HB 602
 - Sentencing Commission/Transparency
 - 2009 Chs. 583 & 584 - SB654/HB 638
 - Transparency



Russell Butler

- ◆ Served eight years on the Commission for Criminal Sentencing Policy (Sentencing Commission)
 - Chair of the Subcommittee that drafted original COMAR regulations
- ◆ Member and Chair of the Victims Advisory Group of the United States Sentencing Commission



Topics for Discussion

- ◆ Historical/Legal Perspective
- ◆ Public Interest
- ◆ Some thoughts for consideration
- ◆ Questions

Right of Access to Court Records



- Common Law
- Court Rules – “Presumption of Openness”
 - Rule 16-904 (P. 15)
- The First Amendment of the United States Constitution as incorporated to the State under the Fourteenth Amendment of the United States Constitution
 - Extract of cases (P. 22-26)

1st Amendment

Nixon v. Warner Commc'ns, Inc., 435 U.S. 589 (1978)

It is clear that the courts of this country recognize a **general right to inspect and copy public records and documents, including judicial records and documents.** (P. 22)

In re Washington Post Co., 807 F.2d 383 (4th Cir. 1986)

We are asked to decide, first, whether the press and public have a First Amendment right of access to plea and sentencing hearings and to documents submitted in connection with such hearings.



1st Amendment



In re Washington Post Co., 807 F.2d 383 (4th Cir. 1986)

Under the First Amendment, on the other hand, such a denial must be “ ‘necessitated by a compelling government interest, and ... narrowly tailored to serve that interest.’ ” *Press-Enterprise I*, 464 U.S. 501, 510, 104 S.Ct. 819, 824, 78 L.Ed.2d 629 (1984), *quoting Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607, 102 S.Ct. 2613, 2620, 73 L.Ed.2d 248 (1982). **Because we conclude that the more rigorous First Amendment standard should apply in this context, we hold that the First Amendment right of access applies to documents filed in connection with plea hearings and sentencing hearings in criminal cases, as well as to the hearings themselves. (P. 23-24)**

1st Amendment



In re Providence J. Co., Inc., 293 F.3d 1 (1st Cir. 2002)

Courts long have recognized “that public monitoring of the judicial system fosters the important values of quality, honesty and respect for our legal system.” This presumptive right of access attaches to those materials “which properly come before the court in the course of an adjudicatory proceeding and which are relevant to that adjudication.”

1st Amendment

In re Providence J. Co., Inc., 293 F.3d 1 (1st Cir. 2002)

Apart from the prerogatives attendant to the common-law right of access to judicial records, the public and the press enjoy a constitutional right of access to criminal proceedings under the First and Fourteenth Amendments. We have held that this constitutional right—which serves to ensure a “full understanding” of criminal proceedings, thereby placing the populace in a position “to serve as an effective check on the system”—extends to documents and kindred materials submitted in connection with the prosecution and defense of criminal proceedings. (P. 25)



1st Amendment

Doe v. Pub. Citizen, 749 F.3d 246 (4th Cir. 2014)

....public access promotes not only the public's interest in monitoring the functioning of the courts but also the integrity of the judiciary.

.. “Public access serves to promote trustworthiness of the judicial process, to curb judicial abuses, and to provide the public with a more complete understanding of the judicial system, including a better perception of fairness.”

Any step that withdraws an element of the judicial process from public view makes the ensuing decision look more like a fiat and requires rigorous justification.” (P.26)



Dr. Soulé's Presentation



- **The Court shall consider the guidelines at sentencing (Criminal Procedure Article, § 6-216)(P. 6)**
- **Guidelines are public records.**
- **“If the judge signs the worksheet.”**
- **COMAR 14.22.01.07 (P. 6) indicates that “The judge and the individuals completing the worksheet shall sign at the bottom of the worksheet in the space provided.”**

Dr. Soulé's Presentation



On the Commission's website, there appears
Version: MAGS 10.0 of the worksheet which
indicates: (P. 7)

- “Sentencing Judge (Please Print)”
- “Sentencing Judge’s Signature”

“**Court clerks** should attach completed
copies to the commit[t]ment or probation
order and also distribute copies to the
following: sentencing judge, **court file**,
prosecution, and defense.”

Dr. Soulé's Presentation

- **Under The Maryland Automated Guidelines System (MAGS), there is no identifier for the judge's name or identifier.**



1st Amendment Analysis



Pre MAGS going back even before the Sentencing Commission, clerks mailed the worksheets (including the name and signature of the judge) to tabulation of data. But as a policy, while the information was there, information on individual judges were not compiled and included in annual report.

As guidelines worksheets are used in determining sentencing, they are subject to the 1st Amendment. (P. 7)

1st Amendment Analysis

What is the reason alleged to prevent the non-access to the name of the judge who conducted the sentencing???

Is it —

- Sentencing is too nuanced?
- It is not fair to use against judges?
- Judges might sentence higher if the public knew what the judge's sentence was?
- Judges should be the judges of other judge?



1st Amendment Analysis



Nothing that I heard was anything near a legal justification “**necessitated by a compelling government interest, and ... narrowly tailored to serve that interest.**” (P. 24)

1st Amendment provides the public with a right to scrutinize judges – not just other judges.

1st Amendment Analysis



Moreover, the prevention of the scrutiny that is occurring, is the scrutiny that the 1st Amendments demands**public access promotes not only the public's interest in monitoring the functioning of the courts but also the integrity of the judiciary.**

.. **“Public access serves to promote trustworthiness of the judicial process, to curb judicial abuses, and to provide the public with a more complete understanding of the judicial system, including a better perception of fairness.”** (P. 26)

1st Amendment Analysis

Also, judges are required to explain the reason for sentencing outside the guidelines ranges –

COMAR 14.22.01.05

.05. Sentences Outside the Guidelines.

A. The judge shall document on the guidelines worksheet the reason or reasons for imposing a sentence outside of the recommended guidelines range. (P.25)

1st Amendment Analysis

Also, judges are required to explain the reason for sentencing outside the guidelines ranges –

COMAR 14.22.01.05

.05. Sentences Outside the Guidelines.

- A. Non-exclusive Common reasons for departure**
- B. 8 to go below guidelines**
- C. 8 to go above guidelines**

Recommendations



1. Statutory codification of COMAR that guidelines worksheets should name the judges, be signed by judges, and included in case files in criminal cases.
2. An entry/data files sent by the Judiciary must contain the name//judicial ID of the sentencing judges or judges.

Access to Records

Comment:



While the judge information for the worksheet must be provided to the Sentencing Commission and available for public access, I do not believe that the General Assembly must require that the Sentencing Commission report the data by judge.

Benefits of Public Access



- What examples type of research would be possible:
- Compare sentences to determine a racial bias
- Compare sentences to compare sentences by judge by plea versus trial
- Ascertain what judges used reconsiderations and research whether guidelines worksheets were submitted in reconsideration cases. (Seeming undercount of reconsideration

Benefits of Public Access



- Research cases of domestic violence and sexual assault for potential bias
- Ascertain which judges are not announcing minimum release times as required by law.
- Judges who are not following the law might conform to the law if reporting by judge was required.

Benefits of Public Access

- Table 13 of the Commission's 2020 report (P. 9) indicates a total of 56 individuals receiving reconsideration for crimes of violence statewide. (Seeming undercount of reconsideration)
- Ascertain what judges used reconsiderations and research whether guidelines worksheets were submitted in all reconsideration cases.



Benefits of Public Access



- Per the Commission's 2020 Annual report, only 38.3 % of the judges conformed with the law regarding disclosure of minimum time for release for a violent crime. (P. 8)
- Judges who are not following the law might conform to the law if reporting by judge was required.

Policy Question

- What is an appropriate sentence and how should that sentence be calculated?
- Dr. Soulé indicated that Maryland's guidelines were “primarily descriptive.”



Guidelines

- Mandatory (Required)
- Presumptive (Rebuttable)
- Voluntary
 - Prescriptive (Should)
 - Descriptive (Others do)



Guidelines

- I advocate neither for mandatory guidelines nor descriptive guidelines.
- As a policy matter, I believe that guidelines should provide guidance on what sentences should be and judges should have appropriate discretion to impose the most appropriate sentence.



MD Guidelines



- “Primarily descriptive” – Issue with revision
- “Good plea” is a plea below guidelines. When revision occurs under descriptive guidelines, sentence guideline ranges creep down.
- In three years at the next revision, sentences will again be below guidelines as new pleas under the guidelines which, in turn, will result in the guidelines being reduced.
- Descriptive guidelines do not express a worthwhile public policy

Recommendation

- 3. Legislation that the Commission utilize presumptive or prescriptive guidelines and revise the guidelines in accord with Criminal Procedure Article, § 6-202. (With presumptive guidelines, applications for leave to appeal by the State and the defendant could be provided for appeals of sentences outside guideline ranges)



MD Guidelines

To achieve

- fair and proportional sentences
- sentencing policies that reduce unwarranted disparity, including any racial disparity, in sentences for criminals who have committed similar crimes and have similar criminal history
- the priority for the capacity and use of correctional facilities should be the confinement of violent and career criminals
- sentencing judges in the State should be able to impose the most appropriate criminal penalties, including corrections options programs for appropriate criminals
- preserve meaningful judicial discretion and sufficient flexibility to allow individualized sentences
- Allow sentencing guidelines to remain voluntary, but that are set by policy that indicate what the sentences should be in average cases as a matter of policy



MD Guidelines

- COMAR 14.22.01 B Amendment effective March 1, 2019 (P. 1)

.01 Scope.

B. Under Criminal Procedure Article, §6-211(b), Annotated Code of Maryland, the sentencing guidelines are voluntary and may not be construed to require a court to sentence a defendant ~~as prescribed by this chapter~~.

Prescriptive language was removed from COMAR.



Problem with Binding Pleas

- Scope of issue – While it is not surprising that 95 % of the cases are resolved by plea bargains, shocking to hear that more than half of those cases (51 %) involve judicial participation in plea bargaining. That number seems astronomical.



Questions with Binding Pleas

- Before binding itself to the sentence, did the court comply with the following before determining the sentence:
 - 1. CP § 6-209 requiring consideration of the guidelines worksheet? (P. 28)
 - 2. CP § 11-402(d) regarding considering victim impact? (P. 29)



Questions with Binding Pleas

- Did the court provide a court's offer below with what the prosecutor and defendant had agreed? (Active plea participant)
- Did the judge who considered the binding plea agreement offer to recuse further participation in the case unless both sides agreed?
- Did the court punish a defendant who rejected the pleas or court's offer?



Questions with Binding Pleas

- Barnes (1987) – State’s offer 50 years, court’s offer 30 years. (P. 16)
 - Judge infringed on the function reserved to counsel
- Sharp (2016) – State’s offer 25 suspend all 10 years; Court’s offer 20 years, suspend all but 8 years. (P. 17-18)
 - Myriad issues caused by “court’s offer”



Questions with Binding Pleas

- Antoine (2020) State's offer 28 months suspended with 1 year probation, court's offer probation before judgment (i.e. no criminal record)(Ignored victim's rights) (P.19)
- Carter (2021) State's offer life suspend all but 40 years, Court's offer life suspend all but 32 years. (P. 20)



Recommendations

- 4. Legislation regarding courts and pleas
 - Court may not make a court's plea offer
 - Only court involvement in plea negotiations/discussion to approve plea as allowed per rule
 - Before binding itself, court must consider guidelines and victim impact
 - If court has considered a binding plea agreement and the court rejects the agreement, affirmative consent from State and defendant in writing or on the record is required or the court must recuse itself.



Mantra

- Regarding sentencing policy – the General Assembly should ensure that the criminal justice systems “**say what it means and mean what it says.**”
- What has happened as I will try to describe, is that legal fictions have developed that contribute to the lack of understanding and confidence in the criminal justice system



Criminal Procedure Article, § 6-202



- Sentencing Commission, -
The General Assembly intends that:
 - (2) sentencing policies should help citizens to understand how long a criminal will be confined;

Criminal Procedure Article, § 6-202



- Citizens do **NOT** understand how long a criminal will be confined
- Citizens are not alone – judges, prosecutors, defense attorneys often **don't know either**

Criminal Procedure Article, § 6-202



- Legal fiction that perhaps was once true that offenders served their full sentence, but today we have parole and diminution credits that reduce the length of incarceration.
- Maryland tried to remove that legal fiction for violent crimes.

Criminal Procedure Article, § 6-217

- Maryland tried to remove that legal fiction for violent crimes.
- How? – The General Assembly required circuit courts in violent crimes to announce in open court when an offender would be eligible for parole and mandatory supervision.



Criminal Procedure Article, § 6-217

(a) Announcement required in open court. --
When a sentence of confinement that is to be served is imposed for a violent crime as defined in § 7-101 of the Correctional Services Article for which a defendant will be eligible for parole under § 7-301(c) or (d) of the Correctional Services Article, the **court shall state in open court** the minimum time the defendant must serve before becoming eligible for parole and before becoming eligible for conditional release under mandatory supervision under § 7-501 of the Correctional Services Article.



Criminal Procedure Article, § 6-217



(b) Statement for information only. -- The statement required by subsection (a) of this section is for information only and is not a part of the sentence.

(c) Failure to comply. -- The failure of a court to comply with subsection (a) of this section does not affect the legality or efficacy of the sentence.

Do judges indicate eligibility for release?

- Most judges **do not announce as required**

We know from data maintained by the Sentencing Commission



2020 Sentencing Commission Annual Report. Page 65



The field capturing whether an announcement was made concerning the mandatory serving of 50% of the sentence was left blank for 84 or 6% of those sentencing events. Figure 25 indicates that among the 1,309 sentencing events with valid data, the announcement was made 38.3% of the time. i.e. Not made in **61.7 %** of cases.

Why do judges not follow the law?



- I do not know, but you should ask?
- Old answer was, judges didn't know the answer.

Why do judges not follow the law?



- Some judge indicated that offenders could be release on mandatory supervision before parole eligibility.
- General Assembly fixed that possibility in 2009

Recommendation

5. Adopt Range Sentences

Bottom of the range is the minimum time to be served and the top of the range is the maximum time to be served

(Examples of other states where I believe have range sentences – Pennsylvania, Utah, West Virginia)

Adopt Range Sentences

For Example -

- Violent Crime - Instead of issuing a sentence for 40 year for second degree murder, issue a sentence of 20 years to 40 years
- Non-Violent – instead of issuing an 8 year sentence for theft, issue a 2 to 8 issue for theft.
- Bottom of the range is the minimum time to be served and the top of the range is the maximum time to be served



Binding Pleas as Compliant



It is a legal fiction to indicate that a binding plea is compliant with the guidelines when it is not within the range.

COMAR 14.22.01

.02 Definitions (P. 2)

(5) Departure.

(a) "Departure" means a judicially imposed sentence that falls outside of the recommended sentencing guidelines range.

(b) "Departure" does not include any sentence that complies with at least one of the requirements that deems a sentence to be within the guidelines as set forth in Regulation .17 of this chapter.



COMAR 14.22.01

.17 Sentences Deemed to Be Within Guidelines. (Legal Fiction) (P. 10)

Notwithstanding the actual guidelines range, the Commission on Criminal Sentencing Policy shall deem a sentence within the guidelines range if a judge:

A. Approved an MSCCSP binding plea agreement and sentence agreed to by both the defendant and by the State;



COMAR 14.22.01

.02 Definitions. (P. 3)

(12) “MSCCSP binding plea agreement” means a plea agreement that:

- (a) Is presented to the court in agreement by an attorney for the government and the defendant’s attorney, or the defendant when proceeding pro se, that a court has approved relating to a particular sentence and disposition;
- (b) Includes agreement to a specific amount of active time (if any), not merely a sentence cap or range;
- (c) The court has the discretion to accept or reject; and
- (d) Is binding on the court under Maryland Rule 4-243(c) if the court accepts the plea.



Recommendation



6. Remove the legal fiction that a binding plea is within in the guidelines.

Public Interest

- Removing legal fictions, providing sunshine, and full disclosure of judicial involvement in sentencing is in the public interest.
- In 1999 and 10 years later in 2009, the General Assembly indicated that sentencing policies should help citizens understand how long a criminal will be confined.
- Twenty-three years later, citizens still do not understand how long a criminal will be confined.
- Judicial involvement in plea bargaining occurs in more than half of all plea cases when judges in federal court and most jurisdictions as well as ABA policy dictate little or no involvement by judges in plea bargaining . The judiciary appears to be violating separation of powers.



Public Interest

- Access to court sentencing guideline data by judge will assist the public.
- Problems may be found. Of course, public access may and hopefully will show that nothing untoward occurred in the sentencing process.
- First Amendment law demand public access and the firewall preventing access should be eliminated. Better confidence in the judiciary is good public policy.
- Judges do NOT have not right of privacy to prevent the public from obtaining reasonable access to data in sentencing guideline worksheets. Now that the sentencing data is transmitted electronically, the sentencing judge data that was there in paper copies must be sent in electronic form.



Recommendations

1. Statutory codification of the COMAR provisions that guidelines worksheets should name the judges, be signed by judges, and be included in case files in criminal cases.
2. An entry/data files sent by the Judiciary to the Commission must contain the name//judicial ID of the sentencing judges or judges.
3. Adopt presumptive or prescriptive guidelines. (With presumptive guidelines, applications for leave to appeal by the state and defendant could be provided for sentences outside guideline ranges)
4. Courts and pleas practices revision
5. Adopt Range Sentences
6. Remove the legal fiction that binging pleas are within in guidelines.



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For
Russell P. Butler's
Presentation
January 28, 2022**

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Showing differences between versions effective [See Text Amendments] to February 28, 2019 and March 1, 2019 [current]

Key: ~~deleted text~~ added text

3 deletions · 3 additions

COMAR 14.22.01.01

.01 Scope.

A. The Maryland sentencing guidelines apply to criminal cases prosecuted in a circuit court. The following sentencing matters handled by judges in a circuit court are excluded from guidelines coverage:

- (1) Prayers for jury trial from District Court, unless a PSI is ordered;
- (2) Appeals from District Court, unless a PSI is ordered;
- (3) Crimes which carry no possible penalty of incarceration;
- (4) Public local laws and municipal ordinances;
- (5) Sentencing hearings in response to a violation of probation;~~and~~
- (6) Criminal nonsupport and criminal contempt~~;~~ and
- (7) Cases adjudicated in a juvenile court.

B. Under [Criminal Procedure Article, § 6-211\(b\)](#), Annotated Code of Maryland, the sentencing guidelines are voluntary and may not be construed to require a court to sentence a defendant ~~as prescribed by this chapter.~~

Credits

Amended Nov. 1, 2016; [March 1, 2019](#).

COMAR 14.22.01.01, MD ADC 14.22.01.01

NOTE: Language in red is recent COMAR amendment from the Commission striking language.

COMAR 14.22.01.02
.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(4) Corrections Options.

(a) "Corrections options" means:

(i) Home detention;

(ii) A corrections options program established under law which requires the individual to participate in home detention, inpatient/residential treatment, or other similar programs involving terms and conditions that constitute the equivalent of confinement;

(iii) Inpatient drug or alcohol counseling under Health General Article, Title 8, Subtitle 5, Annotated Code of Maryland;

(iv) Participation in a problem-solving court, including a drug court, mental health court, family/dependency court, veterans court, or other problem-solving court as defined by the Administrative Office of the Courts' Office of Problem Solving Courts;

(v) A sentence, with required substance abuse treatment, for the possession, administration, obtainment, etc., of controlled dangerous substances (CDS) currently outlined in [Criminal Law Article, § 5-601\(c\)](#), Annotated Code of Maryland, and pursuant to [Criminal Law Article, § 5-601\(e\)\(3\)](#), Annotated Code of Maryland;

(vi) Work release; or

(vii) Weekend (or other discontinuous) incarceration.

(b) "Corrections options" includes programs established by the Department of Public Safety and Correctional Services (DPSCS) and/or local correctional agencies, if the program meets the Commission's criteria, as described in § B(4)(a) of this regulation.

(5) **Departure.**

(a) "Departure" means a judicially imposed sentence that falls outside of the recommended sentencing guidelines range.

(b) "Departure" does not include any sentence that complies with at least one of the requirements that deems a sentence to be within the guidelines as set forth in Regulation .17 of this chapter.

(9) Guidelines Offense.

(a) "Guidelines offense" means an offense prosecuted in a circuit court.

(b) "Guidelines offense" includes the following types of cases:

(i) New trials ordered by appellate courts; and

(ii) Reconsiderations imposed on a defendant for a crime of violence, as defined in [Criminal Law Article, § 14-101](#), Annotated Code of Maryland, and reviews.

(c) “Guidelines offense” does not include the following types of cases:

(i) Prayers for jury trial from District Court, unless a PSI is ordered;

(ii) Appeals from District Court, unless a PSI is ordered;

(iii) Offenses which carry no possible penalty of incarceration;

(iv) Public local laws and municipal ordinances;

(v) Sentencing hearings in response to a violation of probation;

(vi) Criminal nonsupport and criminal contempt; and

(vii) Cases adjudicated in a juvenile court.

(11) “Judge” means:

(a) The trial judge who imposes or alters a sentence; or

(b) A panel of trial judges who alter a sentence.

(12) “MSCCSP binding plea agreement” means a plea agreement that:

(a) Is presented to the court in agreement by an attorney for the government and the defendant’s attorney, or the defendant when proceeding pro se, that a court has approved relating to a particular sentence and disposition;

(b) Includes agreement to a specific amount of active time (if any), not merely a sentence cap or range;

(c) The court has the discretion to accept or reject; and

(d) Is binding on the court under [Maryland Rule 4-243\(c\)](#) if the court accepts the plea.

(20) “Sentencing guidelines worksheet” means the form:

(a) Issued by the Commission on Criminal Sentencing Policy; and

(b) Used to determine the recommended sentence outcome and to record sentencing data.

NOTE: Definitions of “Departure”, “MSCCSP binding plea agreement” and “Sentencing guidelines worksheet” – Court must use the worksheet to determine the recommended sentence, but in the court’s discretion the court can impose whatever sentence the court deems appropriate.

COMAR 14.22.01.03
.03 Sentencing Guidelines Worksheet.

F. Sentencing Guidelines Completion.

- (1) Before the judge imposes the sentence, an individual shall complete the worksheet down to the section labeled “Actual Sentence” and include each convicted offense for which the offender is to be sentenced.
- (2) If the judge orders a PSI, an agent of the Division of Parole and Probation shall complete each worksheet.
- (3) If the judge does not order a PSI, the judge may complete the worksheet personally or delegate the task to counsel or the judge’s staff.
- (4) **Regardless of who completes the worksheet, the court shall review the worksheet to confirm that the guidelines reflected on the worksheet were considered in the respective case.**

G. Presentencing Distribution of Sentencing Guidelines Worksheets.

- (1) The individual who completes the worksheet shall forward a copy of each completed worksheet to both the State and the defense so that they will have an opportunity to review the information provided.
- (2) The State and the defense shall bring any disagreements between them to the judge’s attention before sentencing.
- (3) **Changes in the worksheet may be made only by, or with the approval of, the judge.**

NOTE: Judicial obligation regarding review of worksheet and changes.

COMAR 14.22.01.05
.05. Sentences Outside the Guidelines.

A. The judge shall document on the guidelines worksheet the reason or reasons for imposing a sentence outside of the recommended guidelines range.

B. Common reasons for departure under the guidelines range include, but are not limited to, the following:

- (1) **The parties reached a plea agreement that called for a reduced sentence;**
- (2) The offender had a minor role in the offense;
- (3) The offender was influenced by coercion or duress;
- (4) The offender had diminished capability for judgment;
- (5) The offender made restorative efforts after the offense;
- (6) The victim's participation in the offense lessens the offender's culpability;
- (7) The offender's commitment to substance abuse treatment or other therapeutic program; or
- (8) Recommendation of the State's attorney or Division of Parole and Probation.

C. Common reasons for departure over the guidelines range include, but are not limited to, the following:

- (1) The offender had a major role in the offense;
- (2) The level of harm was excessive;
- (3) Special circumstances of the victim;
- (4) The offender exploited a position of trust;
- (5) The offender committed a "white collar" offense;
- (6) The offender had significant participation in a major controlled substance offense;
- (7) The vicious or heinous nature of the conduct; or
- (8) Recommendation of the State's attorney or Division of Parole and Probation.

NOTE: Common reason codes for departure from the guidelines. Court can depart for other reasons, but the reason or reasons for departing shall be recorded on the worksheet.

COMAR 14.22.01.07
.07 Case Information.

G. Signatures. **The judge** and the individual or individuals completing the worksheet **shall sign at the bottom of the worksheet in the space provided.**

H. Disposition Type.

- (1) The disposition type refers to the nature and circumstances of the conviction and sentencing.
- (2) The individual completing the worksheet shall indicate on the worksheet whether the disposition resulted from:
 - (a) An MSCCSP binding plea agreement;
 - (b) Another plea with agreement;
 - (c) A plea without agreement from the prosecutor or judge regarding the terms of the plea;
 - (d) A court trial; or
 - (e) A trial by jury.
- (3) The judge shall ensure that the disposition type box is marked.

I. Reconsideration or Review. The individual completing the worksheet shall indicate on the worksheet whether the sentence was a reconsideration for a crime of violence, as defined in [Criminal Law Article, § 14-101](#), Annotated Code of Maryland, a three-judge panel review, or neither.

P. Record of Announcement. The court shall make a record of the statement in open court required under [Criminal Procedure Article, § 6-217](#), Annotated Code of Maryland, of the minimum time the defendant must serve before becoming eligible for parole.

NOTE: Judicial obligation for signing the guidelines worksheet and stating the minimum time the defendant must serve before parole eligibility

MARYLAND SENTENCING GUIDELINES WORKSHEET		OFFENDER NAME - Last, First, Middle				SID #	SEX _M_ F	BIRTHDATE	JURISDICTION
PSI ___ Yes ___ No	DATE OF OFFENSE	DATE OF SENTENCING	DISPOSITION TYPE — MSCSP binding plea agreement — Other plea agreement — Plea, no agreement — Court trial — Jury trial	RECONSIDERATION OR 3-JUDGE PANEL REVIEW — Reconsideration (COVs only) — 3-Judge Panel Review — Neither	REPRESENTATION — Private — Public defender — Court appointed — Self	ETHNICITY Hispanic/Latino origin — Yes ___ No ___ — Unknown Victim Court Costs Imposed — Yes ___ No ___	RACE (Select all that apply) — American Indian or Alaska Native — Black or African American — White — Other — Asian — Native Hawaiian or other Pacific Islander — Unknown		
AT THIS SENTENCING NUMBER OF:	CONVICTED OFFENSES	CRIMINAL EVENTS	WORKSHEET # _____ OF _____	CRIMINAL EVENT # _____					
CONVICTED OFFENSE TITLE			I-VII	CJIS CODE	MD CODE, ART. & SECTION	STAT. MAX	MIN TERM	CASE #	
1st Convicted Offense									
2nd Convicted Offense									
3rd Convicted Offense									
OFFENSE SCORE(S) — Offense Against a Person Only			OFFENDER SCORE		GUIDELINES RANGE	ACTUAL SENTENCE — Imposed, Suspended, Time Served, Probation, Restitution, Fine, Corrections Options Program (Drug Court, Home Detention, Etc.)			
1st Off	2nd Off	3rd Off	A. Relationship to CJIS When Instant Offense Occurred 0 = None or pending cases 1 = Court or other criminal justice supervision		1st Con. Off.	1st Convicted Offense			
1	1	1	B. Juvenile Delinquency 0 = 23 years or older or 0 findings of a delinquent act w/in 5 years of the date of the most recent offense 1 = Under 23 years and 1 or 2 findings of a delinquent act w/in 5 years of the date of the most recent instant offense 2 = Under 23 years and 3 or more findings of a delinquent act w/in 5 years of the date of the most recent instant offense		TO	For theft, fraud, and related crimes, please indicate: <input type="checkbox"/> Economic Loss \$ _____ ; <input type="checkbox"/> Unknown Amount Subsequent Offender Proven ___ Yes ___ No Restitution Proven ___ Yes ___ No			
3	3	3	C. Prior Adult Criminal Record 0 = None 3 = Moderate 1 = Minor 5 = Major		2nd Con. Off.	2nd Convicted Offense			
5	5	5	D. Prior Adult Parole/Prob Violation 0 = No 1 = Yes		TO	For theft, fraud, and related crimes, please indicate: <input type="checkbox"/> Economic Loss \$ _____ ; <input type="checkbox"/> Unknown Amount Subsequent Offender Proven ___ Yes ___ No Restitution Proven ___ Yes ___ No			
8	8	8			3rd Con. Off.	3rd Convicted Offense			
10	10	10			TO	For theft, fraud, and related crimes, please indicate: <input type="checkbox"/> Economic Loss \$ _____ ; <input type="checkbox"/> Unknown Amount Subsequent Offender Proven ___ Yes ___ No Restitution Proven ___ Yes ___ No			
B. Victim Injury 0 = 0 0 = No injury 1 = 1 1 = Injury, non-permanent 2 = 2 2 = Permanent injury or death					Additional Sentence Information				
C. Weapon Presence 0 = 0 0 = No weapon 1 = 1 1 = Weapon other than firearm 2 = 2 2 = Firearm or explosive					Probation _____ Community Service _____ Fine \$ _____				
D. Special Victim Vulnerability 0 = 0 0 = No 1 = 1 1 = Yes					Was the offender sentenced to a Corrections Option under Commission criteria? ___ Yes ___ No If yes, select all that apply: <input type="checkbox"/> Drug court <input type="checkbox"/> HS, § 8-507 order <input type="checkbox"/> Home detention <input type="checkbox"/> Suspended sentence per CR, § 5-601(e) <input type="checkbox"/> Inpatient substance abuse treatment <input type="checkbox"/> Work release <input type="checkbox"/> Inpatient mental health treatment <input type="checkbox"/> Weekend (or other discontinuous) incarceration <input type="checkbox"/> Other problem solving court (specify): _____				
OFFENSE SCORE(S)			OFFENDER SCORE(S)		Overall Guidelines Range Multiple Counts Only				
					Was the offender sentenced to some other alternative to incarceration? ___ Yes ___ No If yes, select all that apply: <input type="checkbox"/> Outpatient substance abuse treatment <input type="checkbox"/> Outpatient mental health treatment <input type="checkbox"/> Other (explain): _____				
VICTIM INFORMATION			REASONS FOR GUIDELINES DEPARTURE		Additional Information or Institutional/Parole Recommendation				
Victim	___ Yes ___ No	Departure Code 9 or 18 (Please Explain):		Worksheet Completed By _____					
Victim participation	___ Yes ___ No			Title _____					
Victim notification form	___ Yes ___ No			Sentencing Judge (Please Print) _____					
Victim notified plea	___ Yes ___ No			Sentencing Judge's Signature _____					
Victim notified date	___ Yes ___ No			Parole Notification ___ Yes ___ No					
Victim present	___ Yes ___ No								
Written VIS	___ Yes ___ No								
Oral VIS	___ Yes ___ No								
No contact requested	___ Yes ___ No								
No contact ordered	___ Yes ___ No								
DEPARTURE ___ Yes ___ No									

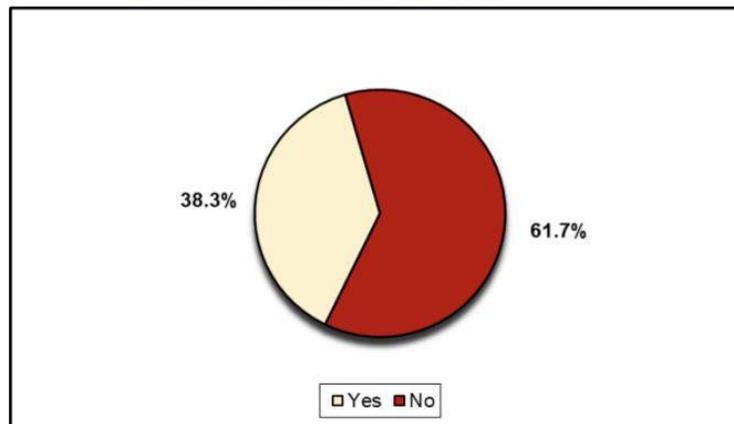
Court clerks should attach completed copies to the commitment or probation order and also distribute copies to the following: sentencing judge, court file, prosecution, and defense

Version: MAGS 10.0

Announcement Regarding the Mandatory Serving of 50% of a Sentence for Violent Offenses

Pursuant to CP, § 6-217, when a sentence of confinement that is to be served is imposed for a violent crime as defined in Correctional Services Article (CS), § 7-101, Annotated Code of Maryland, for which a defendant will be eligible for parole under CS, § 7-301(c) or (d), the court shall state in open court the minimum time the defendant must serve before becoming eligible for parole and before becoming eligible for conditional release under mandatory supervision under CS, § 7-501. The sentencing guidelines worksheet includes an entry location to report whether this announcement was made for sentences involving a violent crime. In fiscal year 2020, 1,309 sentencing guidelines events contained a sentence of confinement for a violent crime. The field capturing whether an announcement was made concerning the mandatory serving of 50% of the sentence was left blank for 84 or 6% of those sentencing events. Figure 25 indicates that among the 1,309 sentencing events with valid data, the announcement was made 38.3% of the time.

Figure 25. Distribution of Guidelines Sentencing Events by Whether 50% Announcement Was Made, Fiscal Year 2020



The MSCCSP staff will continue to review this announcement requirement when providing training sessions. Additionally, the statewide deployment of MAGS will facilitate the collection of whether the announcement was made, as it is a required field necessitating completion prior to the electronic submission of any sentence involving a violent crime.

Table 13. Reconsiderations for Crimes of Violence (CR, § 14-101), Fiscal Year 2020²³

Circuit	Offense	N
SECOND	Murder, 1 st Degree, Attempted	1
THIRD	Assault, 1 st Degree	3
	Firearm Use in Felony or Crime of Violence	2
	Murder, 2 nd Degree	1
	Robbery	3
	Robbery with Dangerous Weapon	1
	Voluntary Manslaughter	1
FOURTH	Robbery	5
FIFTH	Assault, 1 st Degree	3
	Continuing Course of Conduct, 1 st , 2 nd , or 3 rd Degree Sex Offense or 1 st or 2 nd Degree Rape, with Victim Under 14	1
	Firearm Use in Felony or Crime of Violence	2
	Home Invasion	1
	Murder, 2 nd Degree	1
	Murder, 2 nd Degree, Attempted	1
	Rape, 2 nd Degree, with Victim Under 13	1
	Robbery	4
	Robbery with Dangerous Weapon	2
	Sex offense, 2 nd Degree	1
	Sex Offense, 2 nd Degree, with Victim Under 13	1
SIXTH	Child Abuse, Physical, with Death	2
	Armed Carjacking	1
	Assault, 1 st Degree	8
	Firearm Use in Felony or Crime of Violence	4
	Home Invasion	2
	Kidnapping	1
	Rape, 2 nd Degree	1
	Robbery	4
	Robbery with Dangerous Weapon	34
	Sex offense, 2 nd Degree	2
SEVENTH	Assault, 1 st Degree	2
	Firearm Use in Felony or Crime of Violence	1
	Murder, 2 nd Degree	1
	Robbery	1
EIGHTH	Assault, 1 st Degree	1
	Firearm Use in Felony or Crime of Violence	8
	Murder, 1 st Degree, Attempted	2
	Murder, 2 nd Degree	2
	Robbery with Dangerous Weapon	6
	Unarmed Carjacking	1

²³ Table 13 identifies reconsidered sentences for 56 offenders and 119 offenses.

COMAR 14.22.01.17
.17 Sentences Deemed to Be Within Guidelines.

Notwithstanding the actual guidelines range, the Commission on Criminal Sentencing Policy shall deem a sentence within the guidelines range if a judge:

A. Approved an MSCCSP binding plea agreement and sentence agreed to by both the defendant and by the State;

B. Sentenced a defendant to a period of pre-sentence incarceration time with no additional post-sentence incarceration time and the length of credited pre-sentence incarceration exceeds the upper guidelines range for the case; or

C. Imposed a sentence of corrections options if the defendant's:

(1) Initial sentence plus any suspended sentence falls within or above the overall guidelines range; and

(2) Current sentence or sentences and any pending charges do not include a violation of:

(a) A crime of violence under [Criminal Law Article, § 14-101](#), Annotated Code of Maryland;

(b) Sexual child abuse under [Criminal Law Article, § 3-602](#), Annotated Code of Maryland;

(c) Escape; or

(d) A law of the United States or of any other state or the District of Columbia similar to § C(2)(a)--(c) of this regulation.

Note: A binding plea agreement does not include a sentence that is less than an agreed upon sentence.

MD Code, Criminal Procedure, § 6-202

§ 6-202. Legislative intent

The General Assembly intends that:

(1) sentencing should be fair and proportional and that sentencing policies should reduce unwarranted disparity, including any racial disparity, in sentences for criminals who have committed similar crimes and have similar criminal histories;

(2) **sentencing policies should help citizens to understand how long a criminal will be confined;**

(3) sentencing policies should preserve meaningful judicial discretion and sufficient flexibility to allow individualized sentences;

(4) sentencing guidelines be voluntary;

(5) the priority for the capacity and use of correctional facilities should be the confinement of violent and career criminals; and

(6) sentencing judges in the State should be able to impose the most appropriate criminal penalties, including corrections options programs for appropriate criminals.

NOTE: Legislative intent for sentencing and the Sentencing Commission.

MD Code, Criminal Procedure, § 6-217
§ 6-217. Statement of minimum confinement for violent crime

Minimum time defendant must serve before becoming eligible for parole or conditional release

(a) When a sentence of confinement that is to be served is imposed for a violent crime as defined in § 7-101 of the [Correctional Services Article](#) for which a defendant will be eligible for parole under § 7-301(c) or (d) of the [Correctional Services Article](#), the **court shall state in open court the minimum time the defendant must serve before becoming eligible for parole and before becoming eligible for conditional release under mandatory supervision** under § 7-501 of the [Correctional Services Article](#).

Statement for information only

(b) The statement required by subsection (a) of this section is for information only and is not a part of the sentence.

Failure to comply with statement requirements

(c) The failure of a court to comply with subsection (a) of this section does not affect the legality or efficacy of the sentence.

NOTE: Requirement that Court shall state at the time of sentencing the minimum amount of time a defendant must serve before release for violent crimes.

RULE 4-243. PLEA AGREEMENTS

(a) Conditions for Agreement.

(1) *Terms.* The defendant may enter into an agreement with the State's Attorney for a plea of guilty or nolo contendere on any proper condition, including one or more of the following:

(A) That the State's Attorney will amend the charging document to charge a specified offense or add a specified offense, or will file a new charging document;

(B) That the State's Attorney will enter a nolle prosequi pursuant to [Rule 4-247 \(a\)](#) or move to mark certain charges against the defendant stet on the docket pursuant to [Rule 4-248 \(a\)](#);

(C) That the State's Attorney will agree to the entry of a judgment of acquittal on certain charges pending against the defendant;

(D) That the State will not charge the defendant with the commission of certain other offenses;

(E) That the State's Attorney will recommend, not oppose, or make no comment to the court with respect to a particular sentence, disposition, or other judicial action;

(F) That the parties will submit a plea agreement proposing a particular sentence, disposition, or other judicial action to a judge for consideration pursuant to section (c) of this Rule.

(2) *Notice to Victims.* The State's Attorney shall give prior notice, if practicable, of the terms of a plea agreement to each victim or victim's representative who has filed a Crime Victim Notification Request form or submitted a request to the State's Attorney pursuant to Code, [Criminal Procedure Article, § 11-104](#).

(b) Recommendations of State's Attorney on Sentencing. The recommendation of the State's Attorney with respect to a particular sentence, disposition, or other judicial action made pursuant to subsection (a)(1)(E) of this Rule is not binding on the court. The court shall advise the defendant at or before the time the State's Attorney makes a recommendation that the court is not bound by the recommendation, that it may impose the maximum penalties provided by law for the offense to which the defendant pleads guilty, and that imposition of a penalty more severe than the one recommended by the State's Attorney will not be grounds for withdrawal of the plea.

(c) Agreements of Sentence, Disposition, or Other Judicial Action.

(1) Presentation to the Court. If a plea agreement has been reached pursuant to subsection (a)(1)(F) of this Rule for a plea of guilty or nolo contendere which contemplates a particular sentence, disposition, or other judicial action, the defense counsel and the State's Attorney shall advise the judge of the terms of the agreement when the defendant pleads. The judge may then accept or reject the plea and, if accepted, may approve the agreement or defer decision as to its approval or rejection until after such pre-sentence proceedings and investigation as the judge directs.

(2) Not Binding on the Court. The agreement of the State's Attorney relating to a particular sentence, disposition, or other judicial action is not binding on the court unless the judge to whom the agreement is

presented approves it.

(3) Approval of Plea Agreement. If the plea agreement is approved, the judge shall embody in the judgment the agreed sentence, disposition, or other judicial action encompassed in the agreement or, with the consent of the parties, a disposition more favorable to the defendant than that provided for in the agreement.

Committee note: As to whether sentence imposed pursuant to an approved plea agreement may be modified on post sentence review, see *Chertkov v. State*, 335 Md. 161 (1994).

(4) Rejection of Plea Agreement. If the plea agreement is rejected, the judge shall inform the parties of this fact and advise the defendant (A) that the court is not bound by the plea agreement; (B) that the defendant may withdraw the plea; and (C) that if the defendant persists in the plea of guilty, conditional plea of guilty, or a plea of nolo contendere, the sentence or other disposition of the action may be less favorable than the plea agreement. If the defendant persists in the plea, the court may accept the plea of guilty only pursuant to [Rule 4-242 \(c\)](#) and the plea of nolo contendere only pursuant to [Rule 4-242 \(e\)](#).

(5) Withdrawal of Plea. If the defendant withdraws the plea and pleads not guilty, then upon the objection of the defendant or the State made at that time, the judge to whom the agreement was presented may not preside at a subsequent court trial of the defendant on any charges involved in the rejected plea agreement.

(d) Record of Proceedings. All proceedings pursuant to this Rule, including the defendant's pleading, advice by the court, and inquiry into the voluntariness of the plea or a plea agreement shall be on the record. If the parties stipulate to the court that disclosure of the plea agreement or any of its terms would cause a substantial risk to any person of physical harm, intimidation, bribery, economic reprisal, or unnecessary annoyance or embarrassment, the court may order that the record be sealed subject to terms it deems appropriate.

Source: This Rule is derived from former Rule 733 and M.D.R. 733.

NOTE: Rule 4-243(c) regard provisions that allow a court to approved and bind itself to a plea agreement for a specific sentence agreed to by the prosecutor and defendant. Nothing in the Rules allow for a court plea offer.

MD Rules, Rule 16-904(a)

RULE 16-904. GENERAL POLICY

(a) Presumption of Openness. **Judicial records are presumed to be open to the public for inspection.** Except as otherwise provided by the Rules in this Chapter or by other applicable law, the custodian of a judicial record shall permit a person to inspect a judicial record in accordance with Rules 16-922 through 16-924. Subject to the Rules in this Chapter, inspection of case records through the MDEC program is governed by Title 20 of the Maryland Rules.

NOTE: Judicial records (including the sentencing guidelines worksheet) is a document that is presumed by Court rules to be open.

Extract from *Barnes v. State*, 70 Md. App. 694 (1987)

Rather than merely approving or rejecting a plea agreement between the State's Attorney and the defendant, the judge, in effect, negotiated his own agreement with the defendant by offering him a more favorable sentence than the State had been willing to offer in its plea discussions. In the judge's own words:

- She [Ms. Clarke, Assistant State's Attorney] is recommending 50 years ... **But if you wanted to plead guilty, I was willing, even though the State is screaming and *707 kicking for 50 years, I was willing to go around it today in 15 minutes. I would give you a total of 30 years.** That is what I told Mr. Friedman, and Ms. Clarke got angry. She walked out the door.

The trial judge, in our view, improperly interjected himself into the plea bargaining process as an active negotiator, **infringing upon the function reserved to counsel in the adversary process.**

Note: Judge involved in plea negotiations/made court's offer for defendant to plea guilty. Reference to separation of powers problem.

Extract from Sharp v. State, 446 Md. 669 (2016)

... [CIRCUIT COURT]: [Prosecutor], why don't you place on the record what your offer is. [T]he Court will then place on the record what it []s offer is.

[PROSECUTOR]: Your Honor, the State had agreed to offer [C]ount [T]wo, which charges [Sharp] with first[-]degree assault. Upon a finding of guilt, the State would recommend a sentence of twenty-five years [of imprisonment], suspend all but ten [years] to serve. It's my understanding that [Sharp] does not wish to take advantage of that offer.

[CIRCUIT COURT]: All right[,] and the **Court has offered a counter-proposal of twenty years [of imprisonment], suspending all but the first eight years** [. A]nd[, Sharp's counsel], you've had a chance to discuss ... those offers with [Sharp]? ...

[Current ABA Standard 14–3.3(c)] is important because it protects the constitutional presumption of innocence, and avoids placing judicial pressure on the defendant to compromise his or her rights.... The approach taken by [current ABA Standard 14–3.3(c) and (d)] differs from that in the [S]econd [E]dition [of the ABA Standards], which had allowed for a more active role for judges in plea negotiations. It ... is more consistent with federal law and the rules in many [S]tates. A number of court decisions have condemned judicial participation in plea negotiations. Similarly, the Federal Rules of Criminal Procedure ^[18] and **numerous statutes** and ****1107** rules **forbid the involvement of judges in plea discussions**. While there is some evidence that judicial participation in plea negotiations is common in some [S]tate courts, this is not a salutary development. [Current ABA Standard 14–3.3(c) and (d)] reflect the view that direct judicial involvement in plea discussions with the parties tends to be coercive and should not be allowed. Providing an active role for judges in the plea negotiation process, even at the parties' request, is ill-advised, particularly where that judge will preside at trial or at evidentiary hearings should the plea negotiations fail.... Exposure to the facts and tactical considerations revealed during guilty plea negotiations may unduly color the judge's view of the evidence, and predispose the judge in his or her legal rulings.

ABA Standards (3d. ed.) at 134–35 (paragraph break and footnotes omitted).

In *Barnes*, 70 Md.App. at 707, 523 A.2d at 641, in a determination that was consistent with current ABA Standard 14–3.3, the Court of Special Appeals concluded that, by making a plea offer and encouraging the defendant to accept it, the trial court “**improperly interjected [it]self into the plea bargaining process as an active negotiator, infringing upon the function reserved to counsel in the adversary process.**” Ultimately, the Court of Special Appeals held that the defendant's ***700** *Alford* plea was involuntary because “**the language employed by the trial [court] ... very probably intimidated the [defendant] into**” entering an *Alford* plea. *Barnes*, 70 Md.App. at 711, 523 A.2d at 643. Neither this Court nor the Court of Special Appeals has overruled or in any way abrogated the holding of the Court of Special Appeals in *Barnes*.

This case illustrates one of the myriad of issues that may occur where a trial court makes a “court's offer” of a plea agreement—namely, an allegation that, during sentencing, a trial court might have been motivated by the impermissible consideration of a defendant's having declined the trial court's plea offer. To avoid a minefield of issues, we advise trial courts to comport with both *Barnes* and current ABA Standard 14–3.3 and refrain from directly making plea offers to defendants in criminal cases.

Indeed, Maryland Rule 4–243 does not authorize a trial court to make a plea offer. It is the role of the State, not a trial court, to make a plea offer. *See* Md. R. 4–243(a)(1) (“The defendant may enter into an agreement with **the State's Attorney** for a plea of guilty or nolo contendere on any proper condition [.]” (Emphasis added)). The trial court's role is to approve or reject a plea agreement that the parties submit to it, not to come up with its own plea offer—*i.e.*, a “court's offer.” *See* Md. R. 4–243(a)(1)(F) (“**[T]he parties** will submit a plea agreement proposing a particular sentence, disposition, or other judicial action **to a judge** for consideration pursuant to section (c) of this Rule.” (Emphasis added)); Md. R. 4–243(c)(1) (“**The judge may then accept or reject the plea[.]**” (Emphasis added)).

Indeed, there are many reasons why a trial court should not make a plea offer. *See* Current ABA Standard 14–3.3(c) (“The judge should not through word or demeanor, either directly or indirectly, communicate to the defendant or defense counsel that a plea agreement should be accepted or that a guilty plea should be entered.”); Commentary to Current ABA Standard 14–3.3(c) and (d), ABA Standards (3d. ed.) at 134–35 (“[Current ABA Standard 14–3.3(c)] is important because it protects the constitutional presumption of innocence, and avoids placing judicial pressure on the defendant to ***701** compromise his or her ****1108** rights.... [Current ABA Standard 14–3.3(c) and (d)] reflect the view that direct judicial involvement in plea discussions with the parties tends to be coercive and should not be allowed.”). And, even a trial court with the best of intentions may be perceived as pressuring or coercing a defendant to accept the court's plea offer. *See*,

e.g., *Barnes*, 70 Md.App. at 711, 523 A.2d at 643 (“**[T]he language employed by the trial [court] ... very probably intimidated the [the defendant] into**” entering an *Alford* plea.).

Here, Sharp contends that the circuit court impermissibly considered during sentencing his decision not to accept the circuit court's plea offer and plead guilty. Lest there be any doubt, the record contains no indication that the circuit court imposed a harsher sentence because Sharp declined either the circuit court's plea offer or the State's plea offer. At the sentencing proceeding, Sharp's counsel, not the circuit court, initiated the exchange about plea offers. And, although Sharp's counsel referred to the circuit court's plea offer—as opposed to the State's—the circuit court observed that Sharp had declined to “ple[a]d guilty in front of” the circuit court. The circuit court's observation included Sharp's decision to decline both the circuit court's plea offer **and** the State's plea offer. **Had the circuit court followed the procedure that the Court of Special Appeals outlined in *Barnes*, 70 Md.App. at 704, 523 A.2d at 640, the circuit court would have immunized itself from the allegation of impermissible considerations during sentencing based on the circuit court's having made a “court's offer.”** That said, in sum, the circuit court's remarks before the imposition of the sentence do not give rise to the inference that the circuit court might have been motivated in any way by the impermissible consideration of Sharp's decision not to plead guilty. That said, in sum, the circuit court's remarks before the imposition of the sentence **do not give rise to the inference that the circuit court might have been motivated in any way by the impermissible consideration of Sharp's decision not to plead guilty.**

Note: Judge involved in plea negotiations/made court's offer for defendant to plea guilty.

Extract from *Antoine v. State*, 245 Md. App. 521 (2020)

... defense counsel again asked the judge to intervene in the plea negotiations “to get this thing over with and put it behind us.”

The following exchange then occurred:

THE COURT: All right. This is what I'll do. I will actually go—I will give [Mr. Bostic] **probation before judgment**. Okay.

[DEFENSE COUNSEL]: Oh, okay.

THE COURT: All right. I'll give him probation before judgment. But I'm not—you know, and if he wants and I'll postpone it for a hearing on restitution. That's the best you're going to get.

***536** [DEFENSE COUNSEL]: Six. You'll post—we'll do it. We're going to take that probation before judgment.

THE COURT: Sure. I don't—

[DEFENSE COUNSEL]: We will take that any day.

The stand-in prosecutor then summarized the status of the “offers”: “The State's offer was 18 months suspended, one year of supervised probation. **The Court's offer is [] probation before judgment, one year supervised, no contact with the victim.**” ...

Note: Judge involved in plea negotiations/made court’s offer for defendant to plea guilty.

Extract from *Carter v. State*, 2021 WL 3343367, No. 1037, Sept.Term, 2020,
(Md. Ct. Spec. App. Aug. 2, 2021)

Apparently, appellant had rejected the **State's initial guilty plea offer that would have resulted in a sentence of life imprisonment with all but 40 years suspended.** On the first day of trial, appellant made it known that he would accept a guilty plea agreement that would result in a sentence of life imprisonment with all but 30 years suspended. **During guilty plea negotiations that took place at the bench, the trial court made it known that it would agree to a sentence of life with all but 32 years suspended.**

Note: Judge involved in plea negotiations/made court's offer for defendant to plea guilty.

Ali v. Dep't of Pub. Safety & Corr. Servs., 230 Md. App. 682 (2016)

Logic seems to dictate that an inmate would be eligible for discretionary release on parole based upon consideration of a variety of factors, only one of which is conduct during confinement, before an inmate is automatically release on mandatory supervision based on an accumulation of diminution credits, which are awarded solely for conduct during confinement. Indeed, the Parole Commission would be superfluous if an inmate was subject to automatic release on mandatory supervision before the inmate was eligible for discretionary release on parole.

NOTE: An inmate will not be released on mandatory supervision until if and when eligible for parole consideration.

Nixon v. Warner Commc'ns, Inc., 435 U.S. 589 (1978)

It is clear that the courts of this country recognize a **general right to inspect and copy public records and documents, including judicial records and documents.**

Id. at 597.

In re Washington Post Co., 807 F.2d 383 (4th Cir. 1986)

We are asked to decide, first, whether the press and public have a First Amendment right of access to plea and sentencing hearings and to documents submitted in connection with such hearings.

Id. at 385–86.

In the first inquiry, the court asks whether the type of proceeding at issue has traditionally been conducted in an open fashion. In the second inquiry, the court asks whether public access to the proceeding would tend to operate as a curb on prosecutorial or judicial misconduct and would further the public's interest in understanding the criminal justice system. *Press-Enterprise II*, — U.S. at —, 106 S.Ct. at 2739–43; *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 605–06, 102 S.Ct. 2613, 2619–20, 73 L.Ed.2d 248 (1982); *United States v. Brooklier*, 685 F.2d 1162, 1167, 1170 (9th Cir.1982); *United States v. Criden*, 675 F.2d 550, 555–57 (3d Cir.1982). Examination of the decided cases leads us to conclude that the First Amendment right of access extends to hearings of the type involved here. We note, first of all, that both plea hearings and sentencing hearings arguably fall within the scope of the right of access to criminal *trials*, which is clearly guaranteed by *Richmond Newspapers* and *Globe Newspaper Co.* Because the taking of a guilty plea serves as a substitute for a trial, it may reasonably be treated in the same manner as a trial for First Amendment purposes. Sentencing may also be viewed as within the scope of the criminal trial itself. Sentencing can occur before the termination of the trial proceeding, and, even if it occurs in a separate hearing, it clearly amounts to the culmination of the trial. Moreover, even if plea hearings and sentencing hearings are not considered a part of the trial itself, they are surely as much an integral part of a criminal prosecution as are preliminary probable-cause hearings, suppression hearings, or bail hearings, all of which have been held to be subject to the public's First Amendment right of access.

In addition, historical and functional considerations weigh in favor of finding a First Amendment right of access here. **Sentencings have historically been open to the public**; while plea hearings do not have the same long tradition, they are typically held in open court. As to both, **public access serves the important function of discouraging either the prosecutor or the court from engaging in arbitrary or wrongful conduct. The presence of the public operates to check any temptation that might be felt by either the prosecutor or the court to obtain a guilty plea by coercion or trick, or to seek or impose an arbitrary or disproportionate sentence.**

Id. at 389.

We have not yet had occasion to decide whether the First Amendment access right extends to documents. In *In re Knight Publishing Co.*, 743 F.2d 231 (4th Cir.1984), we found it unnecessary to reach the First Amendment question, because we held that the district court had improperly denied the press its *common-law* right of access to judicial records and documents. As the opinion in *Knight Publishing* made clear, the same procedures are required for the evaluation of both common-law and First Amendment access claims. We find it necessary to consider the First Amendment issue today, however, because the present case raises substantive questions as well as procedural ones. The common law does not afford as much substantive protection to the interests of the press and public as the First Amendment does. Under the common law, a trial court's denial of access to documents is reviewed only for abuse of discretion. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597–99, 98 S.Ct. 1306, 1311–13, 55 L.Ed.2d 570 (1978); *In re Knight Publishing Co.*, 743 F.2d at 235. **Under the First Amendment, on the other hand, such a denial must be “ ‘necessitated by a compelling government interest, and ... narrowly tailored to serve that interest.’ ”** *Press-Enterprise I*, 464 U.S. 501, 510, 104 S.Ct. 819, 824, 78 L.Ed.2d 629 (1984), quoting *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607, 102 S.Ct. 2613, 2620, 73 L.Ed.2d 248 (1982). **Because we conclude that the more rigorous First Amendment standard should apply in this context, we hold that the First Amendment right of access applies to documents filed in connection with plea hearings and sentencing hearings in criminal cases, as well as to the hearings themselves.**

Id. at 390.

In re Providence J. Co., Inc., 293 F.3d 1 (1st Cir. 2002)

Courts long have recognized “that public monitoring of the judicial system fosters the important values of quality, honesty and respect for our legal system.” *Siedle v. Putnam Inv., Inc.*, 147 F.3d 7, 10 (1st Cir.1998) (citation and internal quotation marks omitted). This recognition has given rise to a presumption that the public has a common-law right of access to judicial documents. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978). **This presumptive right of access attaches to those materials “which properly come before the court in the course of an adjudicatory proceeding and which are relevant to that adjudication.”**

Id. at 9.

Apart from the prerogatives attendant to the common-law right of access to judicial records, the public and the press enjoy a constitutional right of access to criminal proceedings under the First and Fourteenth Amendments. *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 603–06, 102 S.Ct. 2613, 73 L.Ed.2d 248 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575–80, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) (plurality op.). The constitutional right of access is not limited to the actual trial itself, but also encompasses most pretrial proceedings. *See Press–Enterprise Co. v. Super. Ct.*, 478 U.S. 1, 11–13, 106 S.Ct. 2735, 92 L.Ed.2d 1 (1986) (*Press–Enterprise II*); *In re Globe Newspaper Co.*, 729 F.2d 47, 52 (1st Cir.1984); *see also Anderson*, 805 F.2d at 11 (collecting cases). **We have held that this constitutional right—which serves to ensure a “full understanding” of criminal proceedings, thereby placing the populace in a position “to serve as an effective check on the system”—extends to documents and kindred materials submitted in connection with the prosecution and defense of criminal proceedings.** *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 502 (1st Cir.1989) (citation and internal quotation marks omitted).

Id. at 10.

Doe v. Pub. Citizen, 749 F.3d 246 (4th Cir. 2014)

As explained above, **public access promotes not only the public's interest in monitoring the functioning of the courts but also the integrity of the judiciary.** See *Columbus–Am. Discovery Grp.*, 203 F.3d at 303. “**Public access serves to promote trustworthiness of the judicial process, to curb judicial abuses, and to provide the public with a more complete understanding of the judicial system, including a better perception of fairness.**” *Littlejohn v. Bic Corp.*, 851 F.2d 673, 682 (3d Cir.1988). As Judge Easterbrook, writing for the Seventh Circuit, stated: “The political branches of government claim legitimacy by election, judges by reason. **Any step that withdraws an element of the judicial process from public view makes the ensuing decision look more like a fiat and requires rigorous justification.**”

Id. at 266.

Maryland Rule 18-101.1

A judge shall comply with the law, including this Code of Judicial Conduct.

Criminal Procedure Article, § 6-216.

(a) In general. --

(1) **A circuit court shall consider:**

(i) the sentencing guidelines for ordinary sentences in deciding on the proper sentence; and

(ii) the sentencing guidelines for corrections options in deciding whether to sentence a defendant to a corrections options program or to impose an ordinary sentence.

(2) In deciding whether to sentence a defendant to a corrections options program, the court primarily shall consider the public safety.

Criminal Procedure Article, § 11-402.

(d) The court shall consider the victim impact statement in determining the appropriate sentence or disposition and in entering a judgment of restitution for the victim under § 11-603 of this title.