

Judicial Transparency_GOCCP Written Testimony.pdf

Uploaded by: Cameron Edsall

Position: FAV



CHANGING
Maryland
FOR THE **BETTER**

GOVERNOR'S COORDINATING OFFICES

Community Initiatives · Service & Volunteerism · Deaf & Hard of Hearing
Crime Prevention, Youth, & Victim Services · Small, Minority, & Women Business Affairs
Banneker-Douglass Museum · Volunteer Maryland

February 8, 2022

Chair Luke Clippinger
Judiciary Committee
Room 101
House Office Building
Annapolis, Maryland 21401

RE: HB 412 - State Commission on Criminal Sentencing Policy – Plea Agreements and Annual Report (The Judicial Transparency Act of 2022)

POSITION: Support

Dear Chair Clippinger and Members of the Judiciary Committee,

The Governor's Office of Crime Prevention, Youth, and Victim Services is providing this letter of support for House Bill 412: State Commission on Criminal Sentencing Policy – Plea Agreements and Annual Report (The Judicial Transparency Act of 2022).

This legislation requires the State Commission on Criminal Sentencing Policy to include new information to their existing annual report. If this legislation is enacted, the report shall now include, for each crime of violence as defined in § 14–101 of the Criminal Law Article the following: (1) the crime of which the defendant was convicted, (2) the sentence imposed, (3) the applicable range of sentencing guidelines, (4) disposition of the case, (5) convictions in which a portion of the sentence is suspended, the amount of time suspended and the percentage of sentence suspended, (6) reason for departure from sentencing guidelines, if applicable, (7) court and judicial circuit with jurisdiction over the case, and (8) the sentencing judge.

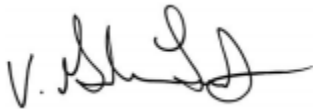
The Governor's Office of Crime Prevention, Youth, and Victim Services emphasizes the importance of data in criminal justice policy and following evidence-based practices to ensure a safer Maryland. This legislation is an example of useful data to criminal justice stakeholders in law enforcement and the judicial system to determine and evaluate if pleas are guideline compliant according to the Maryland State Commission on Sentencing Policy. Additionally, tracking this information will bolster public confidence

For all inquiries, please contact
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that members of the judiciary are holding violent criminals accountable for their actions. With the spike in violent crime throughout the state, the need for accountability in all levels of the justice system cannot be understated.

For these reasons, the Governor's Office of Crime Prevention, Youth, and Victim Services supports House Bill 412 and urges a favorable report.

Sincerely,

A handwritten signature in black ink, appearing to read "V. Glenn Fueston, Jr.", written in a cursive style.

V. Glenn Fueston, Jr.
Executive Director
Governor's Office of Crime Prevention, Youth, and Victim Services

HB 412_GovernorsOffice_Support.pdf

Uploaded by: Erin Chase

Position: FAV



LARRY HOGAN
GOVERNOR

STATE HOUSE
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TTY USERS CALL VIA MD RELAY

**HB 412 State Commission on Criminal Sentencing Policy - Plea Agreements and Annual Report
(The Judicial Transparency Act of 2022)**

Position: Support

House Judiciary Committee

February 8, 2022

**Keiffer Mitchell, Chief Legislative Officer & Senior Counselor, Governor's Office
Erin Chase, Deputy Legislative Officer, Governor's Office**

Chair Clippinger, Vice Chair Moon, and Members of the Committee:

House Bill 412 is an emergency bill that will bring much-needed transparency to our criminal justice system by requiring the State Commission on Criminal Sentencing Policy to publish specific case-by-case information on how violent offenders are being sentenced across our state.

House Bill 412 would require the Sentencing Commission to include in its annual report for each crime of violence as defined by Criminal Law Article § 14-101(a):

1. The crime of which the defendant was convicted;
2. The sentence imposed;
3. The applicable sentencing guidelines range;
4. The disposition of the case, as indicated on the sentencing guidelines worksheet (MSCCSP binding plea agreement; other plea agreement; plea, no agreement; court trial; jury trial);
5. For convictions in which a portion of the sentence is suspended, the amount of time suspended and the percentage of the sentence suspended;
6. For sentencing events that resulted in a departure from the guidelines, the departure reason cited;
7. The court and judicial circuit with jurisdiction over the case; and
8. The sentencing judge.

Additionally, House Bill 412 states that plea agreements cannot be considered compliant with the sentencing guidelines unless the sentence falls within the actual guidelines range, which will produce greater transparency in the annual report published by the State Commission on Criminal Sentencing Policy.

Marylanders must understand what happens in courtrooms across our state. A lack of transparency promotes distrust and insecurity. House Bill 412 will make accessible to stakeholders and policymakers information that will better enable informed decision making on how to improve our criminal justice system.

There are certainly instances in which a sentence outside of the sentencing guidelines may be appropriate. House Bill 412 allows the public to see if, on the aggregate, there are significant outliers in the trends of how violent criminals are sentenced and provides a starting point of information to find out why. The legislation also provides for information on why a sentence outside of the guidelines may have been imposed.

Policy decisions and reforms are only as good as the data that drives them. A criminal justice system in which outcomes are obfuscated by inaccessible proceedings and complex processes leads to a lack of knowledge about a fundamental aspect of government. Public officials in our judicial branch should be held to the same standards of transparency as elected officials in our legislative and executive branches. House Bill 412 brings us closer to a transparent criminal justice system.

For these reasons, the Administration respectfully requests a favorable report on House Bill 412.

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For these reasons, the Administration respectfully requests a favorable report on House Bill 412.

Criminal Justice Transparency Butler.pdf

Uploaded by: Russell Butler

Position: FAV



Criminal Justice Transparency and Related Matters

Presentation to the

◆ **House Judicial**

◆ **Transparency Workgroup**

January 28, 2022

Russell P. Butler


rpbcjb@gmail.com

Russell Butler

- ◆ Resident of Calvert County
- ◆ Adjunct Professor at University of Baltimore Law School
- ◆ Attorney since 1985 and who has litigated criminal justice cases in Maryland Courts and federal courts across the country
- ◆ Member of the Justice Reinvestment Oversight Board

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.



**Reference Material
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	RECONSIDERATION OR 3-JUDGE PANEL REVIEW	REPRESENTATION	ETHNICITY	RACE (Select all that apply)		
AT THIS SENTENCING NUMBER OF:	CONVICTED OFFENSES	CRIMINAL EVENTS	WORKSHEET # OF	CRIMINAL EVENT #	Private Public defender Court appointed Self	Hispanic/Latino origin Yes No Unknown Victim Court Costs Imposed Yes No	American Indian or Alaska Native Black or African American White Other Asian Native Hawaiian or other Pacific Islander Unknown		
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.)			
A. Seriousness Category 1st Off 2nd Off 3rd Off 1 1 1 = V - VII 3 3 3 = IV 5 5 5 = III 8 8 8 = II 10 10 10 = I			A. Relationship to CJIS When Instant Offense Occurred 0 = None or pending cases 1 = Court or other criminal justice supervision 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		1st Con. Off. TO	1st Convicted Offense For theft, fraud, and related crimes, please indicate: Economic Loss \$ _____ Restitution Proven Yes No			
B. Victim Injury 1st Off 2nd Off 3rd Off 0 0 0 = No injury 1 1 1 = Injury, non-permanent 2 2 2 = Permanent injury or death			C. Prior Adult Criminal Record 0 = None 3 = Moderate 1 = Minor 5 = Major D. Prior Adult Parole/Prob Violation 0 = No 1 = Yes		2nd Con. Off. TO	2nd Convicted Offense For theft, fraud, and related crimes, please indicate: Economic Loss \$ _____ Restitution Proven Yes No			
C. Weapon Presence 1st Off 2nd Off 3rd Off 0 0 0 = No weapon 1 1 1 = Weapon other than firearm 2 2 2 = Firearm or explosive			C. Prior Adult Criminal Record 0 = None 3 = Moderate 1 = Minor 5 = Major D. Prior Adult Parole/Prob Violation 0 = No 1 = Yes		3rd Con. Off. TO	3rd Convicted Offense For theft, fraud, and related crimes, please indicate: Economic Loss \$ _____ Restitution Proven Yes No			
D. Special Victim Vulnerability 1st Off 2nd Off 3rd Off 0 0 0 = No 1 1 1 = Yes			C. Prior Adult Criminal Record 0 = None 3 = Moderate 1 = Minor 5 = Major D. Prior Adult Parole/Prob Violation 0 = No 1 = Yes		Overall Guidelines Range Multiple Counts Only	Additional Sentence Information Probation _____ Community Service _____ Fine \$ _____ Was the offender sentenced to a Corrections Option under Commission criteria? Yes No If yes, select all that apply: Drug court H.S. § 8-507 order Home detention Suspended sentence per CR § 5-601(e) Inpatient substance abuse treatment Work release Inpatient mental health treatment Weekend (or other discontinuous) incarceration Other problem solving court (specify): _____			
OFFENSE SCORE(S)			OFFENDER SCORE(S)		TO	Was the offender sentenced to some other alternative to incarceration? Yes No If yes, select all that apply: Outpatient substance abuse treatment Outpatient mental health treatment Other (explain): _____			
VICTIM INFORMATION			REASONS FOR GUIDELINES DEPARTURE		50% of Sentence Announced for COVs Yes No	Additional Information or Institutional/Parole Recommendation Worksheet Completed By _____ Title _____ Sentencing Judge (Please Print) _____ Sentencing Judge's Signature _____			
Victim Yes No Victim participation Yes No Victim notification form Yes No Victim notified plea Yes No Victim notified date 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 Code 9 or 18 (Please Explain): DEPARTURE Yes No			Parole Notification Yes No			

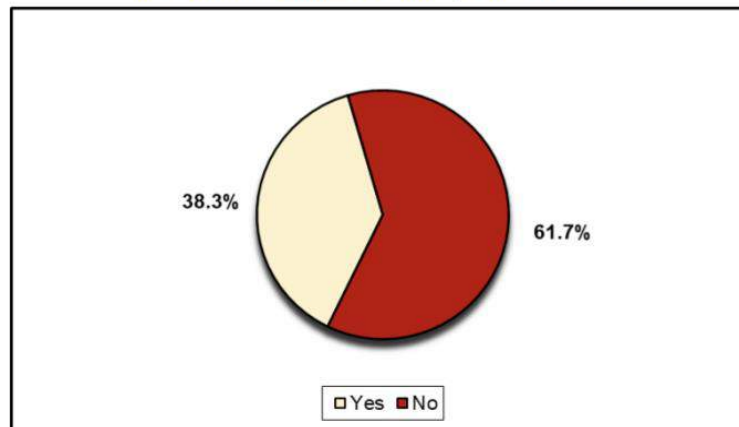
Court clerks should attach completed copies to the commitment or probation order and also distribute copies to the following: sentencing judge, court file, prosecution, and defense

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.

HB 412 - State Commission on Criminal Sentencing P

Uploaded by: Michelle Siri

Position: FWA

BILL NO: House Bill 412
TITLE: State Commission on Criminal Sentencing Policy – Plea Agreements and Annual Report (The Judicial Transparency Act of 2022)
COMMITTEE: Judiciary
HEARING DATE: February 8, 2022
POSITION: **FAVORABLE WITH AMENDMENTS**

House Bill 412 would require certain reporting about sentencing in criminal law cases in the context of the sentencing guidelines. The Women's Law Center of Maryland (WLC) writes today in support of this bill only to ask that if it is the will of the body to pass this law, that the bill be amended to include data on the gender of the defendant being sentenced.

Pages 4 and 5 list data that shall be collected and reported. This data should include the gender of the defendant so that we know if there is disparity when sentencing women versus sentencing men. This is vitally important information to make sure sentences are not being meted out unfairly based on gender.

Therefore, the Women's Law Center of Maryland, Inc. urges a favorable report on House Bill 412, with this amendment.

The Women's Law Center of Maryland is a private, non-profit, legal services organization that serves as a leading voice for justice and fairness for women.

MSCCSP - Unfavorable

Uploaded by: Brett R. Wilson

Position: UNF

MSCCSP



Maryland State Commission on Criminal Sentencing Policy

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Sen. Chris R. West

Executive Director

David A. Soulé, Ph.D.

University of Maryland
4511 Knox Road, Suite 309
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TO: House Judiciary Committee

FROM: MSCCSP

RE: House Bill 412
State Commission on Criminal Sentencing Policy – Plea
Agreements and Annual Report (The Judicial Transparency
Act of 2022)

DATE: February 8, 2022

POSITION: Oppose

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP or Commission) convened via videoconference on February 7, 2022, to solicit feedback on House Bill (HB) 412 and its cross-filed Senate Bill (SB) 392. Fourteen of the 19 Commissioners participated in the videoconference. By unanimous vote with 3 abstentions, the Commission voted to oppose HB 412 and its cross-filed SB 392.

The Commissioners voted to oppose HB 412/SB 392 because the legislation is inconsistent with the Commission’s historical and statutory purpose. Sentencing guidelines are voluntary and were never intended to impose an absolute limit on judicial discretion, or to gather and/or publish judge-specific sentencing information. Further, effective April 1, 2021, the MSCCSP narrowed the definition of what constitutes a guidelines-compliant binding plea, specifying that such pleas require agreement from all three parties (judge, prosecution, defense) to a specific amount of active time (if any), not merely a sentence cap or range. This revision followed a comprehensive study by the MSCCSP of binding pleas that included a review of definitions of binding plea agreements from other jurisdictions, an examination of relevant Maryland case law, and an analysis of data on sentences for guidelines-eligible cases sentenced from 2017 through 2019. The Commission appreciates the legislature’s concerns and respectfully requests that the legislature defer to allow the Commission time to assess the impact of the April 1, 2021, revised definition of guidelines-compliant binding pleas.

hb412.pdf

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Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 412
State Commission on Criminal Sentencing Policy – Plea
Agreements and Annual Report (The Judicial Transparency Act of
2022)
DATE: February 2, 2022
(2/8)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 412. This legislation expands upon the required reporting that the State Commission on Criminal Sentencing must provide to the General Assembly. The new reporting outlined in the proposed legislation requires that the Commission, for each conviction of a crime of violence as defined in Criminal Law §14-101(a), report: (i) the crime of which the defendant was convicted; (ii) the sentence imposed; (iii) the applicable sentencing guidelines range; (iv) the disposition of the case, as indicated on the sentencing guidelines worksheet; (v) for convictions in which a portion of the sentence is suspended, the amount of time suspended and the percentage of the sentence suspended; (vi) the sentencing events that resulted in a departure from the sentencing guidelines, the departure reason cited; (vii) the court and judicial circuit with jurisdiction over the case; and (viii) the sentencing judge.

The Judiciary agrees with and restates the opposition set forth by the Maryland State Commission on Criminal Sentencing Policy (Sentencing Commission) in its written comments filed in 2019 in response to SB 179 (2019). The Sentencing Commission states that the Sentencing Guidelines are voluntary and were never intended to impose a limit on judicial discretion or to gather and/or publish judge-specific sentencing information. To the contrary, specific data relating to the sentences imposed by individual judges is irrelevant to the original purpose of the Sentencing Guidelines, which was (and is) to ensure uniformity and fairness across regional, jurisdictional, and racial demographics. In other words, a sentence for armed robbery should not be vastly different based on the race of the offender or whether one is convicted in Washington County or Prince George’s County.

The history of the sentencing guidelines in Maryland is helpful in understanding their purpose. To ensure fairness and uniformity, the Judiciary introduced the concept of

judicial sentencing guidelines in the late 1970s. After developing and piloting a model to reflect the sentencing practices, the Judicial Conference voted favorably on (and the Maryland General Assembly approved) the guidelines, adopting them formally statewide in 1983. In 1999, the Maryland General Assembly created the Maryland State Commission on Criminal Sentencing Policy (known as the Sentencing Commission) to oversee sentencing policy and to monitor the State's voluntary sentencing guidelines. The General Assembly established six goals to guide the Commission's work: (1) sentencing should be fair and proportional and sentencing policies should reduce unwarranted disparity, (2) sentencing policies should help citizens understand how long a criminal will be confined, (3) the preservation of meaningful judicial discretion, (4) sentencing guidelines should be voluntary, (5) the prioritization of prison usage for violent and career criminals, and (6) the imposition of the most appropriate criminal penalties.

From its inception, the Sentencing Commission was careful to protect judicial discretion by not collecting judge-specific data. Its purpose was never to sit in judgment of individual judicial decisions, but rather to provide judges with the necessary information for imposing sentences that are in proportion to sentences imposed throughout the state in a fair and impartial manner.

Judicial discretion in sentencing is deeply rooted in the constitutional requirements of due process and the separation of powers. House Bill 412 contravenes these Constitutional values by imposing Executive, Legislative, and public scrutiny of individual judicial sentencing decisions, based **solely** on length (or severity) of that sentence. Moreover, judges are uniquely prohibited from publicly discussing or defending the choices they make in the exercise of their discretion. The Maryland Code of Judicial Conduct, Maryland Rule 18.-104.4(a), provides: "A judge shall abstain from public comment that relates to a proceeding pending or impending in any court and that might reasonably be expected to affect the outcome or impair the fairness of that proceeding" In addition, the Judicial Code of Conduct states unequivocally: "A judge shall not be swayed by public clamor or fear of criticism." (Md Rule 18-102.4)

The bill does not capture all the data needed to provide an accurate picture of a sentencing decision. Judges are required to consider a myriad of factors, including, but not limited to an offender's criminogenic needs, amenability to treatment and/or rehabilitation, support in the community, mitigating and aggravating factors, victim safety and statements, and gang affiliation. This bill does not require reporting the prosecutor's sentencing recommendation. This bill does not account for the vast majority of sentencing events that arise from negotiated plea agreements, where the prosecutor and defense attorney agree to a disposition of a case without a trial. This may result in a disposition that includes a recommended sentence that is lower than the range provided by the sentencing guidelines.

It is important to note that this bill, as drafted, does not promote "transparency," as claimed. Rather it serves to gather data regarding the sentencing decisions of individual

judges, based only on the single factor of length of incarceration without taking into account all other considerations. The results would thus be misleading.

cc. Hon. Adrienne Jones
Judicial Council
Legislative Committee
Kelley O'Connor

HB 412 - MSBA Informational Letter (2022.02.04).pd

Uploaded by: Shaoli Katana

Position: INFO

MEMORANDUM

To: Members of the House Judiciary Committee

From: Maryland State Bar Association (MSBA)
Shaoli Katana, Esq., Director

Subject: House Bill 412 - State Commission on Criminal Sentencing Policy – Plea Agreements and Annual Report (The Judicial Transparency Act of 2022)

Date: February 4, 2022

Position: **Informational Only**

The Maryland State Bar Association (MSBA) respectfully files this informational letter on **House Bill 412 - State Commission on Criminal Sentencing Policy – Plea Agreements and Annual Report (The Judicial Transparency Act of 2022)**. House Bill 412 provides that a sentence imposed under a plea agreement may not be determined to be compliant with certain sentencing guidelines unless the sentence falls within the actual sentencing guidelines range; and requiring a certain annual report by the State Commission on Criminal Sentencing Policy to identify certain information for crimes of violence.

MSBA represents more legal professionals than any other organization across the State in all practice areas. MSBA serves as the voice of Maryland’s legal profession. Through its Laws Committee and various practice-specific sections, MSBA monitors and takes positions on legislation of importance to the legal profession. MSBA is proud to recognize hundreds of judges from around the state as our members.

MSBA recognizes the importance of considering sentencing data and trends, but HB 412 raises concerns about separation of powers and infringement on the Judiciary.

Historically, MSBA has looked at sentencing guidelines as references, but not as mandatory requirements. HB 412 defines a sentence imposed under a plea agreement as non-compliant with the sentencing guidelines unless the sentence falls within the actual sentencing guidelines range. The bill does not account for valid reasons to deviate from current sentencing guidelines and contravenes judicial independence.

HB 412 also requires annual reporting by the State Commission on Criminal Sentencing Policy to include, for specific cases, the publication of the sentence imposed, the sentencing guidelines, and the name of the sentencing judge. Much of this information is already publicly available and could be used without identifying the specific judge, but instead, by identifying a judicial circuit. Disclosing details about individual judges jeopardizes their independence and safety. The proposed annual reporting would also fail to provide a comprehensive report of the many reasons that may support a sentence in a specific case, as that cannot be drilled down into the data points listed in the bill.

MSBA welcomes an opportunity to be a resource and provide relevant subject matter experts as your Committee considers the proposed legislation. Please feel free to contact Shaoli Katana at MSBA at shaoli@msba.org.