

SB 392_GovernorsOffice_Support.pdf

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**SB 392 State Commission on Criminal Sentencing Policy - Plea Agreements and Annual Report
(The Judicial Transparency Act of 2022)**

Position: Support

Senate Judicial Proceedings Committee

February 10, 2022

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

Chair Smith, Vice Chair Waldstreicher, and Members of the Committee:

Senate Bill 392 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.

Senate Bill 392 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, Senate Bill 392 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. Senate Bill 392 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. Senate Bill 392 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. Senate Bill 392 brings us closer to a transparent criminal justice system.

For these reasons, the Administration respectfully requests a favorable report on Senate Bill 392.

MSCCSP Statement on SB 392.pdf

Uploaded by: David Soule

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
College Park, MD 20742-8660
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TO: Senate Judicial Proceedings Committee

FROM: MSCCSP

RE: SB 392
State Commission on Criminal Sentencing Policy – Plea
Agreements and Annual Report (The Judicial Transparency
Act of 2022)

DATE: February 10, 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 Senate Bill (SB) 392 and its cross-filed House Bill (HB) 412. Fourteen of the 19 Commissioners participated in the videoconference. By unanimous vote with 3 abstentions, the Commission voted to oppose SB 392 and its cross-filed HB 412.

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.

OPPOSE SB 392.pdf

Uploaded by: Philip Caroom

Position: UNF

OPPOSE SB 392

MARYLAND ALLIANCE FOR JUSTICE REFORM
Working to end unnecessary incarceration and build strong, safe communities



TO: Chairman Luke Clippinger and House Judiciary Committee

Feb.10, 2022

FROM: Phil Caroom, MAJR Executive Committee

Maryland Alliance for Justice Reform (MAJR) commends the Governor's policies, in general, to fund evidence-based strategies to make our State's law enforcement efforts more fair and effective. However, MAJR also opposes two Administration bills—SB 392—as misguided in its departure from these policies in indirectly seeking longer, “tough-on-crime” sentences. As noted in Maryland's Justice Reinvestment Act (JRA) study with support of the Pew Institute, summarizing nationally-recognized scientific research, described important reasons that longer prison sentences, by themselves, do not end the cycle of criminal activity:

[D]ata and research demonstrat[e] that longer prison terms do not reduce recidivism.... [Also, r]esearch suggests that a high percentage of criminal justice- involved individuals suffer from substance abuse and mental health disorders requiring treatment and support....

*While prison may provide access to [some] substance abuse treatment, it is not the most cost-effective environment in which to deliver it. Further, **research indicates that incarcerating drug offenders can actually increase the likelihood they will recidivate once they leave prison.** This is because prison can exacerbate the criminal risk factors that drive recidivism by expanding the sphere of antisocial influence. [Final JRCC Report of Dec. 2015, at pp. 28 and 13; emphasis added, footnotes omitted.]*

SB 392 would require the Maryland sentencing commission to create, in effect, an annual individual report card for every trial judges' sentencing records as to crimes of violence. The bill is designed to provide this tool for an election-year challenger to make the argument that “this judge doesn't sentence heavily enough to be ‘tough on crime’ so you should vote for me instead.” – The balance of information required by SB 392, effectively, is already available in the Sentencing Commission records.

Without transcripts of each sentencing hearings, SB 392's compiled sentencing guidelines worksheets would provide scant explanation of reasons for below-guidelines sentencing decisions, such as cases that involve minimal public threat or harm, or mitigating circumstances such as the minor role of a youthful offender. Judicial ethics rules generally prevent incumbent judges from offering specific explanations of sentences, except in the courtroom on the record. During the election cycle itself, a judge could comment on a case only if the appeal period on the conviction and sentencing had passed, and if there were no pending motion for sentence modification. Maryland Rules 18-102.10(a) and 18-104.4 (d)(4).

Maryland prison sentences cost taxpayers over \$40,000 per inmate per year. More effective drug treatment, mental health treatment, and job programs with intensive community supervision may yield better results in terms of stopping drug addiction and crime, as well as costing only a fraction of prisons' cost. For all these reasons, MAJR encourages the committee to give an unfavorable report to SB 392.

NOTE: Phil Caroom offers this testimony for MAJR and not for the Md. Judiciary

sb392.pdf

Uploaded by: Sara Elalamy

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: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 392
State Commission on Criminal Sentencing Policy – Plea
Agreements and Annual Report (The Judicial Transparency Act of
2022)
DATE: February 2, 2022
(2/10)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 392. 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. Senate Bill 392 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. Bill Ferguson
Judicial Council
Legislative Committee
Kelley O'Connor

SB 392 - MSBA Informational Letter (2022.02.08).pd

Uploaded by: Shaoli Katana

Position: INFO

MEMORANDUM

To: Members of the Senate Judicial Proceedings Committee

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

Subject: Senate Bill 392 - State Commission on Criminal Sentencing Policy – Plea Agreements and Annual Report (The Judicial Transparency Act of 2022)

Date: February 8, 2022

Position: **Informational Only**

The Maryland State Bar Association (MSBA) respectfully files this informational letter on **Senate Bill 392 - State Commission on Criminal Sentencing Policy – Plea Agreements and Annual Report (The Judicial Transparency Act of 2022)**. Senate Bill 392 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 requires 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 SB 392 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. SB 392 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.

SB 392 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.