

MSCCSP Releases Updated Maryland Sentencing Guidelines Manual, Effective February 1, 2015

February 1, 2015 Release of the Maryland Sentencing Guidelines Manual

On February 1, 2015, the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) released a new version of the Maryland Sentencing Guidelines Manual (MSGM, Version 7.0). This new manual includes revisions to the guidelines summarized below, as well as minor edits and formatting changes.

Due to budget constraints, the MSCCSP is not able to provide printed copies of the MSGM. Please access a print-friendly version of the updated MSGM via the MSCCSP website at: msccsp.org/Files/Guidelines/MSGM/guidelinesmanual.pdf. You should discard any prior versions of the MSGM, as information contained within may no longer be accurate.

Guidelines Effective Date

Over the course of several meetings in 2014, the MSCCSP reviewed the implications of *Peugh v. United States*, 569 U.S. ___, 133 S. Ct. 2072, 186 L. Ed. 2d 84 (2013), for the Maryland sentencing guidelines. After reviewing and discussing both the *Peugh* case and similarities and differences between the United States sentencing guidelines and the Maryland sentencing guidelines, the MSCCSP determined that *Peugh* does not require that the Maryland sentencing guidelines in effect on the date of offense determine the recommended guidelines range. The MSCCSP maintained that the sentencing guidelines and offense seriousness categories in effect at the time of sentencing determine the guidelines range. The MSCCSP decided, however, to amend the Code of Maryland Regulations (COMAR) 14.22.01.03B and corresponding language in the **Preface**, **Section 5.2**, and the **Frequently Asked Questions** chapter of the MSGM to clarify that:

If it is determined that the guidelines are different than what they would have been if calculated using the sentencing guidelines and offense seriousness categories in effect on the date the offense of conviction was committed, the State's Attorney or defense counsel may bring this to the attention of the judge as a consideration for departure from the guidelines.

Subsequent Offender Status Indication on Presentence Investigation Orders

Based on feedback from parole and probation agents, the MSCCSP has amended the MSGM to encourage judges to indicate, on a presentence investigation (PSI) order, when a defendant has been convicted as a subsequent offender. The MSCCSP learned that parole and probation agents are unlikely to be aware of a defendant's subsequent offender status unless it has been noted on the PSI order. Since the practice of noting a defendant's subsequent offender status on the PSI order is not followed in all jurisdictions, it can be difficult for agents to calculate guideline ranges accurately, as the guidelines may need to be adjusted to account for subsequent offender status. Consequently, the MSCCSP adopted language in **Sections 3.5** and **8.6** of the MSGM requesting that judges indicate on the PSI order when the State's Attorney has filed a notice of subsequent offender.

Instructions for Accessory Convictions

Effective October 1, 2013, House Bill 709 amended Criminal Law Article (CR), §1-301, Annotated Code of Maryland, to prescribe specific penalties for accessory after the fact to first degree murder and accessory after the fact to second degree murder. While the MSCCSP previously assigned seriousness categories for these offenses, the amendment to CR, §1-301 prompted a review of the accessory scoring instructions in the COMAR and corresponding text in the MSGM. Upon review, the MSCCSP concluded that further changes to the accessory scoring instructions were warranted. Specifically, the MSCCSP noted that since no other statute besides CR, §1-301 presently prescribes penalties for accessory after the fact, provision (d)(ii) in COMAR 14.22.01.09B(2) referring to accessory after the fact offenses that have a penalty of greater than 5 years under a statute *other than* CR, §1-301, should be removed. Further, the MSCCSP noted that since accessory before the fact had been abrogated to be handled as a principal offense by Criminal Procedure Article (CP), §4-204(b), provision (d)(iv) in COMAR 14.22.01.09B(2) regarding accessory before the fact should also be removed. Finally, the MSCCSP noted that clarification to the remaining instructions was necessary because, under the current wording, a more stringent seriousness category could be assigned to accessory after the fact than to the underlying offense in certain instances. The MSCCSP amended the accessory scoring instructions in the COMAR 14.22.01.08C, COMAR 14.22.01.09B(2)(d), COMAR 14.22.01.10B(3)(g), revised the corresponding text in the MSGM, and relocated relevant language from Section 6.1.A to **Section 5.2** of the MSGM. As revised, the accessory instructions provide:

Conspiracy, attempt, solicitation, or accessoryship. Unless placed in a different category or specifically addressed by separate statute, the individual completing the worksheet shall consider a conspiracy, attempt, or solicitation in the same seriousness category as the substantive offense.

- a. If the accessory after the fact has a penalty of 5 years or greater under CR, §1-301, a seriousness category V shall be assigned, *unless* the underlying offense has a seriousness category of less than V, in which case the accessory after the fact shall be assigned the same seriousness category as the underlying offense.
- b. If the accessory after the fact has a penalty of less than 5 years under CR, §1-301, the seriousness category shall be the same category as the underlying offense.

Calculating Prior Adult Criminal Record Concerning Convictions for Use or Possession of Less than 10 Grams of Marijuana

Effective October 1, 2014, CR, §5-601, as amended by Senate Bill 364, provides that the use or possession of less than 10 grams of marijuana is a civil offense punishable by a fine not exceeding \$100 for a first violation, \$250 for a second violation, and \$500 for a third or subsequent violation. In light of Senate Bill 364, the MSCCSP considered whether revisions were needed for the instructions for how to score the Prior Adult Criminal Record for an individual with a prior conviction for marijuana use or possession of less than 10 grams. In deference to the general spirit of the General Assembly's decision to eliminate the collateral consequences which arise out of criminal convictions for small amounts of marijuana and disproportionately affect already disadvantaged groups, the MSCCSP agreed on revisions to the COMAR 14.22.01.10B(3)(a)(i) and corresponding language in **Section 7.1.C** of the MSGM, excluding prior convictions for the use or possession of less than 10 grams of marijuana from the calculation of a defendant's Prior Adult Criminal Record.

Analogous Offenses

The MSCCSP has clarified how to score offenses that are not listed in the Guidelines Offense table when calculating the Prior Adult Criminal Record. The COMAR and MSGM previously instructed persons completing guidelines worksheets to use the seriousness category of the closest analogous offense for crimes that have not been assigned a seriousness category, but did not provide guidance for determining the closest analogous offense. The MSCCSP, therefore, voted to amend the COMAR 14.22.01.10B(3)(d), COMAR 14.22.02.02, and corresponding language in **Section 7.1.C.2** of the MSGM, to state:

If there is a question as to the analogous guidelines offense for an out of state conviction, that question should be brought to the attention of the judge at sentencing.