



Guidelines E-News

Vol. 15, No. 3 – July 2020



IN THIS ISSUE

- *Military Adjudications and the Prior Adult Criminal Record*
- *Classification of Conspiracy to Commit a Lawful Act by Unlawful Means*
- *Unique MAGS Entry for CDS Distribution, PWID, Manufacture, etc.–Fentanyl*
- *Three Offenses with a Maximum Penalty of One Year or Less Added to Guidelines Offense Table*

Military Adjudications and the Prior Adult Criminal Record

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) has clarified the instructions in the Maryland Sentencing Guidelines Manual (MSGM) for the computation of the prior adult criminal record component of the offender score. The revised instructions specify which military adjudications shall and shall not be included in the calculation of the defendant's prior record score. Specifically, the added language indicates that the prior record shall not include (1) military adjudications imposed by an Article 15 proceeding or summary court-martial or (2) findings of guilt by general or special courts-martial, if the elements of the offense require the defendant's service in a military force, including but not limited to desertion, absence without leave (AWOL), and conduct unbecoming an officer and a gentleman, or do not constitute an offense under Maryland law. Further, when scoring the prior record, if an offender has a finding of guilt by a general or special court-martial, the military adjudication shall be matched as closely as possible to the closest analogous Maryland offense. If a military adjudication has no equivalent in Maryland law or requires as an element of the offense the defendant's service in a military force, the offense shall be excluded from the adult prior criminal record. If there is a question as to the analogous guidelines offense for a military adjudication, that question shall be brought to the attention of the judge at sentencing.

The affected sections of the MSGM are as follows:

- MSGM ¶ 2 Definitions
 - Definition of adjudication (page 3)
- MSGM ¶ 7.1. Computation of the Offender Score
 - C. Prior Adult Criminal Record (page 25)
 - C.2. Additional Instructions (page 30)

The above revisions were adopted in the applicable sections of the Code of Maryland Regulations (COMAR) effective July 1, 2020. Practitioners are advised to access a print-friendly PDF version of the updated [MSGM](#) (version 12.2) via the MSCCSP website. Because nearly all the page numbers have shifted with the added text, it is recommended that practitioners [print the full manual](#) rather than attempting to replace individual pages.

Classification of Conspiracy to Commit a Lawful Act by Unlawful Means

The MSCCSP has classified the offense *conspiracy to commit a lawful act by unlawful means* and has added to the MSGM an explanation of the seriousness category and offense type classification for the offense. Specifically, the seriousness category and offense type classification shall be the same as the most serious unlawful means by which the lawful act was to be accomplished. If there is a question as to the seriousness category or offense type classification for the conspiracy to commit a lawful act by unlawful means, that question shall be brought to the attention of the judge at sentencing.

The offense has been added to the Guidelines Offense Table. Additionally, there are unique entries in the list of offenses in the Maryland Automated Guidelines System (MAGS) for *conspiracy to commit a lawful act by unlawful means* for each seriousness category (I-VII) and offense type (person, drug, property) of the unlawful means.

| Offense Literal | Source | Felony or Misd. | Max Term | Offense Type | Seriousness Category |
|--|------------|-----------------|----------|----------------------------|--|
| Conspiracy Conspiracy to commit a lawful act by unlawful means | Common Law | Misd. | LIFE | Person Drug Property | Same seriousness category as most serious unlawful means |

The following provide example scenarios.

- Example 1. The defendant is charged with conspiracy to establish and entrench a gang via illegal means of robbery, armed carjacking, and theft. The most serious of these means is armed carjacking, a seriousness category II person offense. Therefore, conspiracy to establish and entrench a gang would be classified as a seriousness category II person offense, with a statutory maximum of life.
- Example 2. The defendant is charged with conspiracy to establish and entrench a gang via dog fighting, distribution of heroin, and possession of heroin. The most serious of these means is the distribution of heroin, a seriousness category III-B drug offense. Therefore, conspiracy to establish and entrench a gang would be classified as a seriousness category III-B drug offense, with a statutory maximum of life.

The affected sections of the MSGM are as follows:

- MSGM ¶ 5.2 Seriousness Category (I–VII)
 - Conspiracy, attempt, solicitation, or accessoryship (page 17)
- MSGM Appendix A – Guidelines Offense Table (begins page 120)

The above revisions were adopted in the applicable sections of the Code of Maryland Regulations (COMAR) effective July 1, 2020. Practitioners are advised to access a print-friendly PDF version of the updated [MSGM](#) (version 12.2) via the MSCCSP website. As noted above, because nearly all the page numbers have shifted with the added text, it is recommended that practitioners [print the full manual](#) rather than attempting to replace individual pages.

Unique MAGS Entry for CDS Distribution, PWID, Manufacture, etc.–Fentanyl

Effective July 1, 2020, a unique entry for *CDS distribution, PWID, manufacture, etc.–Fentanyl* has been added to the list of offenses in MAGS. Previously, MAGS users were instructed to select *CDS distribution, PWID, manufacture, etc.–Other narcotics* when the distribution-related offense involved fentanyl.

Three Offenses with a Maximum Penalty of One Year or Less Added to Guidelines Offense Table

By guidelines rule, if a Maryland offense has not been assigned a seriousness category and the offense has a maximum penalty of 1 year or less, the offense shall be assigned the lowest seriousness category (VII). Due to space considerations, not all guidelines offenses with a maximum penalty of 1 year or less are included in the Guidelines Offense Table. This is especially true of offenses that are infrequently sentenced in the State's circuit courts. When the MSCCSP is made aware of offenses that are not listed in the Guidelines Offense Table but are repeatedly sentenced in circuit courts, those offenses are added to the table.

In response to practitioners' requests, the following three offenses with a maximum penalty of one year or less have been added to the Guidelines Offense Table and the list of offenses in MAGS.

| Offense Literal | Source | Felony or Misd. | Max Term | Offense Type | Seriousness Category | Fine |
|--|---------------|------------------------|-----------------|---------------------|-----------------------------|-------------|
| Abuse and Other Offensive Conduct Confine unattended child | FL, §5-801 | Misd. | 30D | Person | VII | \$500 |
| Identity Fraud Possess/use false government ID; display government ID of another | CR, §8-303 | Misd. | 6M | Property | VII | \$500 |
| Pretrial Release, Crimes Involving Violate release conditions while charged with committing a sexual crime against a minor, a crime of violence, a crime against a person eligible for relief, or stalking | CP, §5-213.1 | Misd. | 90D | Person | VII | |

These additions were adopted in the Code of Maryland Regulations (COMAR) effective July 1, 2020. A print friendly version of the updated [Guidelines Offense Table](#) (Appendix A of the MSGM) is available on the MSCCSP website. This file is searchable by key word, CJIS Code, Source, etc. Please discard any prior versions of the Guidelines Offense Table, as information in prior versions may no longer be accurate. Note that the Guidelines Offense Table is included in Appendix A of the [MSGM](#). As such, if practitioners print the updated MSGM (version 12.2), it is not necessary to separately print the Guidelines Offense Table.