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## MEMORANDUM

DATE: March 16, 2022

TO: MSCCSP Commissioners/Criminal Justice Stakeholders

FROM: MSCCSP Staff

RE: Implementation of Revisions to the Sentencing Matrices for Drug and Property Offenses

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### Revisions to the Sentencing Matrices for Drug and Property Offenses

Following a review of sentencing guidelines compliance, the Maryland State Commission on Criminal Sentencing Policy (MSCCSP or Commission) approved during its December 7, 2021, business meeting, revisions to the sentencing matrices for drug and property offenses **effective July 1, 2022**. The review process is summarized below, followed by a description of the plan to implement the revisions. The revisions are detailed in the matrices provided on the last two pages of this memo.

Review of compliance with the sentencing guidelines is one of the primary responsibilities of the MSCCSP and is statutorily required by the Commission's enabling legislation (Criminal Procedure Article, § 6-209(b)(1)(ii)). Accordingly, the MSCCSP regularly conducts detailed cell-by-cell compliance reviews by examining guidelines compliance within each cell of the sentencing matrices.<sup>1</sup> The Maryland sentencing guidelines are intended to be primarily descriptive and are informed by analysis of current sentencing practices. As such, the guidelines may be amended when the data indicate that sentences are not consistent with the recommended ranges.

The review leading up to the revisions approved by the MSCCSP in December was initiated in the spring of 2021 and spanned five Commission meetings. Data from single-count guidelines sentencing events in calendar years 2018 through 2020 were utilized to inform the review. The review considered both *regular compliance* and *strict compliance* by matrix cell, with a focus on the latter. Strict compliance considers a sentence guidelines-compliant only if the initial sentence (defined as the sum of incarceration, credited time, and home detention; not including suspended time) falls within the applicable guidelines range.<sup>2</sup> Particular attention was paid to matrix cells with compliance rates below the 65% benchmark standard and a sufficient sample size of at least 50 total cases. The Commission adopted the goal of 65% as the benchmark standard for

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<sup>1</sup> A "cell" is the grid intersection of an individual's offender score and offense seriousness category (for drug and property offenses) or offense score (for person offenses) within the respective sentencing guidelines matrix that determines the sentence recommendation.

<sup>2</sup> Regular compliance provides several additional conditions for a compliant sentence. First, sentences that involve no post-sentence incarceration but fall above the upper guidelines limit due to credit for time served are guidelines-compliant. Second, sentences to corrections options programs are guidelines-compliant provided that the initial sentence plus any suspended sentence falls within or above the applicable guidelines range and the sentencing event does not include a crime of violence, child sexual abuse, or escape. Finally, sentences pursuant to a binding plea agreement are guidelines-compliant.



sentencing guidelines compliance with the understanding that guidelines revisions may be considered when sentences depart from the guidelines in more than a third of cases.

The analysis of strict compliance by matrix cell for sentences in 2018 through 2020 indicated that strict compliance dipped below the 65% benchmark for a substantial number of matrix cells. In response, the MSCCSP determined that revisions to the recommended ranges in both the drug and property matrices were warranted.<sup>3</sup> To inform the revisions, the MSCCSP examined the middle 65% of sentences within each cell (for cells with at least 10 cases). The middle 65% of sentences represents what the guidelines range would need to be to capture the exact middle 65% of sentences in calendar years 2018 through 2020. Revised ranges were identified with the goal of moving the guidelines substantially closer to the middle 65%. However, the revisions do not correspond strictly to the middle 65%, as they also offer proportional incremental increases going across the matrices (as the offender criminal history score increases) and down the matrices (as the offense severity increases). The revised ranges are intended to strike a balance between (1) the middle 65% of current sentences, (2) the number of months in each range, and (3) the proportionality of ranges across cells.

As noted, the revisions are detailed in the matrices for drug and property offenses provided on the last two pages of this memo. Each matrix cell contains the middle 65% of sentences (in red), the current guidelines range (in blue), and the pending guidelines range (in green). Additionally, the current and pending guidelines ranges with a *strict compliance* rate less than 65% and at least 50 cases are highlighted in yellow. The yellow highlighting indicates that the pending revisions bring the ranges closer to actual sentences, decreasing the number of non-compliant cells from fifteen to nine in the drug matrix and from fourteen to six in the property matrix. Further, all the revised cells with at least 50 cases have a *regular compliance* rate of 65% or greater.

The proposed amendments to the sentencing matrices for drug and property offenses were presented for a vote at the Commission's November 10, 2021, meeting. At that time, the Commission voted to tentatively approve the amendments pending public comment at a December 7, 2021, hearing. The proposed amendments were posted on the MSCCSP website and were published in the Maryland Register in advance of the December 7 hearing. Further, the Commission distributed a call for comment on the proposed amendments to an e-mail distribution list of more than 1,500 criminal justice practitioners and interested individuals. After receiving input on the proposed amendments at the public hearing, the Commission voted on December 7, 2021, to officially adopt the proposed amendments to the sentencing matrices for drug and property offenses.<sup>4</sup>

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<sup>3</sup> The Commission decided to address the drug and property matrices before considering changes to the more complex person matrix. Whereas the drug and property matrices base offense severity on the offense seriousness category, the person matrix factors in the additional elements of victim injury, weapon presence, and victim vulnerability. Potential revisions to the person offense matrix may be considered later.

<sup>4</sup> For those interested in additional information on the cell-by-cell compliance review, a [video presentation](#) further detailing the review process is available on the MSCCSP website.



## **Implementation of the Approved Revisions to the Sentencing Matrices for Drug and Property Offenses**

As with any changes to the sentencing guidelines, the Commission must promulgate the proposed revisions to the sentencing matrices for drug and property offenses through the Code of Maryland Regulations (COMAR). Promulgation is a multi-step process occurring over several months, and regulations do not become effective until the end of the process. The promulgation process begins with submitting proposed regulations to the Office of the Attorney General. An Assistant Attorney General reviews proposed regulations to ensure they are legal. After the Attorney General approves proposed regulations for legality, the next step is to submit the proposal to the General Assembly's Joint Committee on Administrative, Executive, and Legislative Review (AELR Committee). The AELR Committee ensures that proposed regulations are consistent with legislative intent and due process. The Commission can submit the proposed regulations to the Division of State Documents 15 days after they are on file with the AELR Committee. The Division of State Documents ensures that everything is in order and in the proper form, then publishes the proposed regulations in the Maryland Register. A 45-day comment and review period follows publication. Note that as of March 15, 2022, this 45-day review period has been completed. Following the comment and review period, the Commission formally adopts the regulations by submitting a Notice of Final Action to the Division of State Documents for publication in the Maryland Register. Regulations may not become legally effective until at least 10 days after publication of the Notice of Final Action.

In addition to the COMAR promulgation process, the Maryland Automated Guidelines System (MAGS) will require programming changes to reflect the revisions to the sentencing matrices for drug and property offenses. The MSCCSP staff will also need to update all the various sentencing guidelines instructional materials, including the Maryland Sentencing Guidelines Manual (MSGM), the MAGS User Manual, and the MSCCSP website to reflect the guidelines revisions. Given these necessary steps, it is anticipated that the effective date for final adoption of the revisions will be July 1, 2022. A *Guidelines E-News* will be distributed to criminal justice stakeholders in advance of this date as a reminder of the pending guidelines revisions for all circuit court cases sentenced on or after July 1, 2022.



# Pending Amendments to the Sentencing Matrix for Drug Offenses in COMAR 14.22.01.11D(2)

**Row 1: Middle 65% of sentences, 2018-2020 single-count cases (Total number of cases for the cell)**  
**Row 2: Current guidelines range**  
**Row 3: Pending guidelines range, effective July 1, 2022**  
 ■ Strict compliance less than 65% and total N at least 50.

Offender Score								
Offense Seriousness Category	0	1	2	3	4	5	6	7 or more
VII	P-<.1M (N=538)	P-.7M (N=328)	P-1.9M (N=115)	P-4.2M (N=144)	P-4.4M (N=130)	P-6.3M (N=87)	P-6M (N=131)	--- (N=6)
	P	P	P	P-1M	P-3M	P-6M	3M-6M	6M-2Y
	P	P	P-1M	P-3M	P-4M	P-6M	P-9M	P-1Y
VI	Available for future use. There are currently no seriousness category VI drug offenses.							
V	--- (N=4)	--- (N=7)	--- (N=2)	--- (N=4)	--- (N=4)	--- (N=2)	--- (N=5)	--- (N=5)
	P-1M	P-6M	P-1Y	1M-1Y	2M-18M	3M-2Y	4M-3Y	6M-4Y
	P-1M	P-3M	P-4M	P-6M	P-9M	P-1Y	1M-18M	2M-2Y
IV	P-.1M (N=711)	P-1.9M (N=346)	P-7.8M (N=106)	P-11.5M (N=162)	P-1Y (N=126)	<.1M-1.7Y (N=73)	.1M-1.5Y (N=87)	1.2M-3Y (N=54)
	P-3M	P-9M	1M-1Y	2M-18M	3M-2Y	4M-2.5Y	6M-3Y	8M-5Y
	P-3M	P-4M	P-6M	P-9M	P-1Y	1M-18M	2M-2Y	3M-3Y
III-A Marijuana import 45 kilograms or more, and MDMA 750 grams or more	--- (N=6)	--- (N=0)	--- (N=0)	--- (N=0)	--- (N=0)	--- (N=0)	--- (N=0)	--- (N=0)
	P-18M	P-2Y	6M-2Y	1Y-4Y	2Y-6Y	3Y-8Y	4Y-12Y	10Y-20Y
	P-6M	P-9M	P-18M	1M-2Y	3M-3Y	6M-5Y	1Y-6Y	2Y-8Y
III-B Non-marijuana and non-MDMA, Except Import	P-6.3M (N=673)	P-1.5Y (N=496)	<.1M-18M (N=202)	<.1M-3Y (N=349)	.1M-5Y (N=366)	<.1M-5Y (N=309)	.1M-7Y (N=551)	4.2M-13Y (N=273)
	6M-3Y	1Y-3Y	18M-4Y	3Y-7Y	4Y-8Y	5Y-10Y	7Y-14Y	12Y-20Y
	P-9M	P-18M	1M-2Y	3M-3Y	6M-5Y	1Y-6Y	2Y-8Y	4Y-12Y
III-C Non-marijuana and non-MDMA, Import	--- (N=4)	P-1.9Y (N=10)	--- (N=0)	--- (N=2)	--- (N=7)	--- (N=2)	--- (N=0)	--- (N=1)
	1Y-4Y	2Y-5Y	3Y-6Y	4Y-7Y	5Y-8Y	6Y-10Y	8Y-15Y	15Y-25Y
	P-18M	1M-2Y	3M-3Y	6M-5Y	1Y-6Y	2Y-8Y	4Y-12Y	6Y-14Y
II	--- (N=0)	--- (N=0)	--- (N=0)	--- (N=0)	--- (N=1)	--- (N=0)	--- (N=0)	--- (N=1)
	20Y-24Y	22Y-26Y	24Y-28Y	26Y-30Y	28Y-32Y	30Y-36Y	32Y-37Y	35Y-40Y
	16Y-20Y	18Y-22Y	20Y-24Y	22Y-26Y	24Y-28Y	26Y-30Y	28Y-32Y	30Y-36Y



### Pending Amendments to the Sentencing Matrix for Property Offenses in COMAR 14.22.01.11E(2)

**Row 1: Middle 65% of sentences, 2018-2020 single-count cases (Total number of cases for the cell)**  
**Row 2: Current guidelines range**  
**Row 3: Pending guidelines range, effective July 1, 2022**  
 ■ Strict compliance less than 65% and total N at least 50.

<i>Offender Score</i>								
<i>Offense Seriousness Category</i>	0	1	2	3	4	5	6	7 or more
VII	P-.2M (N=358)	P-3.3M (N=186)	P-6.5M (N=57)	P-10M (N=65)	P-18M (N=45)	P-1.5Y (N=40)	P-1.5Y (N=47)	--- (N=1)
	P-1M	P-3M	3M-9M	6M-1Y	9M-18M	1Y-2Y	1Y-3Y	3Y-5Y
	P	P-3M	P-6M	P-9M	P-1Y	P-18M	1M-2Y	6M-2.5Y
VI	P-1M (N=265)	P-6M (N=115)	P-1.5Y (N=45)	P-1Y (N=56)	.2M-1.6Y (N=66)	.2M-2.6Y (N=24)	--- (N=4)	--- (N=1)
	P-3M	P-6M	3M-1Y	6M-2Y	1Y-3Y	2Y-5Y	3Y-6Y	5Y-10Y
	P-3M	P-6M	P-9M	P-1Y	P-18M	1M-2Y	3M-3Y	9M-5Y
V	P-3M (N=225)	P-8.1M (N=62)	P-1.1Y (N=17)	P-1Y (N=29)	<.1M-2Y (N=28)	.4M-4.7Y (N=18)	3.2M-4.3Y (N=20)	--- (N=3)
	P-6M	P-1Y	3M-2Y	1Y-3Y	18M-5Y	3Y-7Y	4Y-8Y	8Y-15Y
	P-6M	P-9M	P-1Y	P-18M	1M-2Y	3M-3Y	6M-5Y	1Y-6Y
IV	P-5.1M (N=169)	P-1Y (N=109)	<.1M-1.5Y (N=58)	<.1M-2.3Y (N=79)	5.2M-3Y (N=72)	<.1M-4Y (N=77)	4.1M-6.2Y (N=78)	--- (N=6)
	P-1Y	3M-2Y	6M-3Y	1Y-4Y	18M-7Y	3Y-8Y	5Y-12Y	10Y-20Y
	P-9M	P-1Y	P-18M	1M-2Y	3M-3Y	6M-5Y	9M-6Y	18M-8Y
III	P-1.5Y (N=166)	P-1.8Y (N=73)	P-1.5Y (N=47)	.1M-2Y (N=61)	.7M-5Y (N=79)	4.9M-6Y (N=65)	1.3Y-10Y (N=66)	--- (N=3)
	P-2Y	6M-3Y	9M-5Y	1Y-5Y	2Y-8Y	3Y-10Y	7Y-15Y	15Y-30Y
	P-1Y	P-18M	1M-2Y	3M-3Y	6M-5Y	9M-6Y	1Y-8Y	2Y-9Y
II	--- (N=1)	--- (N=1)	--- (N=0)	--- (N=0)	--- (N=0)	--- (N=0)	--- (N=0)	--- (N=0)
	2Y-5Y	3Y-7Y	5Y-8Y	5Y-10Y	8Y-15Y	10Y-18Y	12Y-20Y	15Y-40Y
	1Y-3Y	18M-4Y	2Y-5Y	3Y-7Y	5Y-8Y	5Y-10Y	7Y-12Y	8Y-15Y