



SENTENCING GUIDELINES FOR MARYLAND CIRCUIT COURTS

AGENCY:

Maryland State Commission on Criminal Sentencing Policy

ACTION:

Notice of tentatively, but not officially, approved amendments to the Sentencing Matrix for Drug Offenses and the Sentencing Matrix for Property Offenses. Request for public comment.
Notice of public hearing.

SUMMARY:

Pursuant to Section 6-208 of the Criminal Procedure Article, Annotated Code of Maryland, and the bylaws of the Maryland State Commission on Criminal Sentencing Policy (the “MSCCSP” or the “Commission”), the MSCCSP has tentatively, but not officially, approved amendments to the Sentencing Matrix for Drug Offenses and the Sentencing Matrix for Property Offenses. This notice sets forth the tentative amendments and a synopsis of the issues addressed by the amendment. This notice also sets forth issues for public comment.

The tentative amendments and issues for comment in this notice are as follows: amendments to revise the guidelines-recommended sentencing ranges for cells in the Sentencing Matrix for Drug Offenses and the Sentencing Matrix for Property Offenses to more accurately reflect current judicial experience and the General Assembly’s intent.

DATES:

(1) Written Public Comment.—The MSCCSP should receive written public comment regarding the tentative amendments and any other sentencing policy issues by no later than **December 6, 2021**.



(2) Public Hearing.—The MSCCSP will hold a public hearing regarding the tentative amendments and any other criminal sentencing policy issues. The public hearing will begin promptly at 5:00 pm on Tuesday, December 7, 2021. Further information regarding the public hearing, including requirements for testifying and providing written comment, is available on the MSCCSP’s website at: <https://msccsp.org/about/meetings/>.

ADDRESS:

Written public comment should be sent to the MSCCSP by electronic mail or postal mail. The email address for public comment is dsoule@umd.edu. The postal mail address for public comment is Maryland State Commission on Criminal Sentencing Policy, 4511 Knox Road, Suite 309, College Park, MD 20742-8660.

FOR FURTHER INFORMATION CONTACT:

David Soulé, Executive Director, (301) 403-4165, dsoule@umd.edu.

SUPPLEMENTARY INFORMATION:

The MSCCSP is an independent agency in the executive branch of Maryland’s government. The MSCCSP promulgates sentencing guidelines for use in Maryland circuit courts, pursuant to Criminal Procedure Article, §§ 6-208, 6-211. The MSCCSP also monitors circuit court sentencing practices and, when necessary, adopts changes to the guidelines consistent with same and legislative intent, pursuant to Criminal Procedure Article, § 6-210.

The MSCCSP requests public comment regarding whether, pursuant to Criminal Procedure Article, §§ 6-208, 6-210 to 6-211, the tentative amendments referred to in this notice (and available on the Commission’s website noted above) should be promulgated as part of the Code of Maryland Regulations (COMAR), Section 14.22.01.11D(2) and Section 14.22.01.11E(2), and



included in the Maryland Sentencing Guidelines Manual. Additional information pertaining to the proposed amendment described in this notice and the Commission's mission may be accessed through the MSCCSP's website at www.msccsp.org.



THE SENTENCING MATRIX FOR DRUG OFFENSES, PROPERTY OFFENSES AND RELATED ISSUES

Synopsis of Proposed Amendments:

Pursuant to the Maryland Code's Criminal Procedure Article, § 6-209, each year the MSCCSP analyzes guidelines compliance from the preceding year as part of its Annual Report. (MSCCSP Annual Reports are available at: <https://msccsp.org/reports/annual-reports/>.) In addition to the overall yearly compliance reviews, the MSCCSP typically undertakes a more detailed review of guidelines compliance for individual matrix cells.¹ The last cell-by-cell compliance analysis examined data from fiscal years 2009 through 2013 and concluded in December 2015 with the Commission's decision to revise the drug matrix for seriousness categories IV and V offenses. The revisions were adopted effective July 1, 2016. At its May 2019 meeting, the Commission considered the timing of its next review and ultimately decided to postpone the review until 2021. The MSCCSP authorized its staff to conduct an updated analysis of guidelines compliance for individual matrix cells using data from single-count sentences in calendar years 2018 through 2020. This decision was made to allow for the collection of sufficient data following two events of note: (1) the July 2016 revisions to the drug matrix and (2) the October 2017 revisions to the seriousness categories for several common offenses in response to the Justice Reinvestment Act (JRA). Waiting until this year to initiate the review permitted the collection of three full calendar years of post-JRA sentencing guidelines data. The Guidelines Subcommittee reports during the MSCCSP's May 2021, July 2021, September 2021, and November 2021 meetings included updates from this analysis. (MSCCSP meeting minutes are available at: <https://msccsp.org/about/minutes/>.)

¹ 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.



The first step of the review identified matrix cells with guidelines compliance rates below the MSCCSP's longstanding 65% benchmark and based on at least 50 cases. The second step examined closely the sentences within these specific cells. Central to the review was a consideration of (1) regular compliance and (2) strict compliance within each matrix cell. While prior reviews have focused on regular compliance, this review also focused on strict compliance.

A number of factors determine regular compliance. First, a sentence is guidelines-compliant if the initial sentence (defined as the sum of incarceration, credited time, and home detention) falls within the applicable guidelines range. Second, sentences that involve no post-sentence incarceration but fall above the upper guidelines limit due to credit for time served are guidelines-compliant. Third, 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 an American Bar Association (ABA) plea agreement are guidelines-compliant. In comparison, strict compliance considers a sentence guidelines-compliant only if the initial sentence (defined as the sum of incarceration, credited time, and home detention) falls within the applicable guidelines range. The decision to consider both regular and strict compliance in this review was in part because the Commission received inquiries concerning the criteria for an ABA plea and ultimately revised the name and definition of what constitutes a guidelines-compliant binding plea.²

² Effective April 1, 2021, the name of a guidelines-compliant plea agreement was changed from *ABA plea agreement* to *MSCCSP binding plea agreement* and the definition was revised to the following:

A plea agreement 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. An MSCCSP binding plea agreement means an agreement to a specific amount of active time (if any), not merely a sentence cap or range. The court has the discretion to accept or reject the plea. The agreement is binding on the court under Maryland Rule 4-243(c) if the court accepts the plea.



The review process showed that only five of 224 cells (2.2%) across the three matrices had a regular compliance rate less than 65% and at least 50 total cases. However, 59 of 224 cells (26.3%) had a strict compliance rate less than 65% and at least 50 total cases. Specifically, 15 of the 56 drug matrix cells (26.8%), 14 of the 48 property matrix cells (29.2%), and 30 of the 120 person matrix cells (25%) had a strict compliance rate less than 65% and at least 50 total cases. In most cells where the strict compliance rate was less than 65%, departures below the guidelines exceeded departures above the guidelines. Based on these findings and the fact that the Maryland sentencing guidelines are intended to be primarily descriptive (rather than prescriptive), the Commission determined that revisions to all three sentencing guidelines matrices should be considered. Further, the Commission agreed that the consideration of revisions would occur in two stages, beginning with proposed revisions to the drug and property matrices, followed by the person matrix.³

At its November 10, 2021, meeting, the MSCCSP tentatively, but not officially, approved the amendments to the drug and property matrices described below. In drafting the amended ranges, MSCCSP staff identified first what the ranges would had to have been to capture the middle 65% of cases. The tentative amended ranges seek to balance capturing the middle 65% of cases with proportionality across offender scores and seriousness categories for offenses. This involved comparing each cell to those above (less serious), below (more serious), to the left (lower offender score), and right (higher offender score), and necessitated also changing cell ranges for cells that previously had at least 65% compliance to maintain consistency and proportionality when moving up and down columns and across rows. The revisions more accurately reflect

³ The Commission has not yet considered amendments to the person matrix.



judicial sentencing practices while maintaining proportionality across rows and columns of the matrices, consistent with the principles of the guidelines.

Under the tentatively amended ranges, all drug and property matrix cells with at least 50 total cases have a regular compliance rate of at least 65% for calendar years 2018 through 2020.

Further, under the tentatively amended ranges, the number of cells with at least 50 cases and a strict compliance rate less than 65% decreased from 15 to nine cells in the drug matrix and decreased from 14 to six in the property matrix. Because of the significance of the changes to the contents of the drug and property matrix cells and to ensure the transparency of the guidelines review process, the MSCCSP decided to solicit comments from law practitioners, other criminal justice stakeholders, and the public before moving forward with formal and final amendments of the Sentencing Matrix for Drug Offenses and the Sentencing Matrix for Property Offenses.

The MSCCSP seeks public comment specifically on the proposed amendments to both the Sentencing Matrix for Drug Offenses and the Sentencing Matrix for Property Offenses.



Tentative 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
 (Number of months between lower and upper ranges)

Row 3: Proposed guidelines range
 (Number of months between lower and upper ranges)

■ Strict compliance less than 65% and total N at least 50.
 □ Strict compliance less than 65% and total N less than 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 (1)	P-3M (3)	(P-6M) (6)	3M-6M (3)	6M-2Y (18)
	P	P	P-1M (1)	P-3M (3)	P-4M (4)	P-6M (6)	P-9M (9)	P-1Y (12)
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 (1)	P-6M (6)	P-1Y (12)	1M-1Y (11)	2M-18M (16)	3M-2Y (21)	4M-3Y (32)	6M-4Y (42)
	P-1M (1)	P-3M (3)	P-4M (4)	P-6M (6)	P-9M (9)	P-1Y (12)	1M-18M (17)	2M-2Y (22)
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 (3)	P-9M (9)	1M-1Y (11)	2M-18M (16)	3M-2Y (21)	4M-2.5Y (26)	6M-3Y (30)	8M-5Y (52)
	P-3M (3)	P-4M (4)	P-6M (6)	P-9M (9)	P-1Y (12)	1M-18M (17)	2M-2Y (22)	3M-3Y (33)
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 (18)	P-2Y (24)	6M-2Y (18)	1Y-4Y (36)	2Y-6Y (48)	3Y-8Y (60)	4Y-12Y (96)	10Y-20Y (120)
	P-6M (6)	P-9M (9)	P-18M (18)	1M-2Y (23)	3M-3Y (33)	(6M-5Y (54)	1Y-6Y (60)	2Y-8Y (72)
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 (30)	1Y-3Y (24)	18M-4Y (30)	3Y-7Y (48)	4Y-8Y (48)	5Y-10Y (60)	7Y-14Y (84)	12Y-20Y (96)
	P-9M (9)	P-18M (18)	1M-2Y (23)	3M-3Y (33)	6M-5Y (54)	1Y-6Y (60)	2Y-8Y (72)	4Y-12Y (96)
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 (36)	2Y-5Y (36)	3Y-6Y (36)	4Y-7Y (36)	5Y-8Y (36)	6Y-10Y (48)	8Y-15Y (84)	15Y-25Y (120)
	P-18M (18)	1M-2Y (23)	3M-3Y (33)	6M-5Y (54)	1Y-6Y (60)	2Y-8Y (72)	4Y-12Y (96)	6Y-14Y (96)
II	--- (N=0)	--- (N=0)	--- (N=0)	--- (N=0)	--- (N=1)	--- (N=0)	--- (N=0)	--- (N=1)
	20Y-24Y 48	22Y-26Y 48	24Y-28Y 48	26Y-30Y 48	28Y-32Y 48	30Y-36Y 72	32Y-37Y 60	35Y-40Y 60
	16Y-20Y 48	18Y-22Y 48	20Y-24Y 48	22Y-26Y 48	24Y-28Y 48	26Y-30Y 48	28Y-32Y 48	30Y-36Y 72



Tentative 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
 (Number of months between lower and upper ranges)

Row 3: Proposed guidelines range
 (Number of months between lower and upper ranges)

■ Strict compliance less than 65% and total N at least 50.
 □ Strict compliance less than 65% and total N less than 50.

Offender Score								
Offense Seriousness Category	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 (1)	P-3M (3)	3M-9M (6)	6M-1Y (6)	9M-18M (9)	1Y-2Y (12)	1Y-3Y (24)	3Y-5Y (24)
	P	P-3M (3)	P-6M (6)	P-9M (9)	P-1Y (12)	P-18M (18)	1M-2Y (23)	6M-2.5Y (24)
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 (3)	P-6M (6)	3M-1Y (9)	6M-2Y (18)	1Y-3Y (24)	2Y-5Y (36)	3Y-6Y (36)	5Y-10Y (60)
	P-3M (3)	P-6M (6)	P-9M (9)	P-1Y (12)	P-18M (18)	1M-2Y (23)	3M-3Y (33)	9M-5Y (51)
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 (6)	P-1Y (12)	3M-2Y (21)	1Y-3Y (24)	18M-5Y (42)	3Y-7Y (48)	4Y-8Y (48)	8Y-15Y (84)
	P-6M (6)	P-9M (9)	P-1Y (12)	P-18M (18)	1M-2Y (23)	3M-3Y (33)	6M-5Y (54)	1Y-6Y (60)
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 (12)	3M-2Y (21)	6M-3Y (30)	1Y-4Y (36)	18M-7Y (66)	3Y-8Y (60)	5Y-12Y (84)	10Y-20Y (120)
	P-9M (9)	P-1Y (12)	P-18M (18)	1M-2Y (23)	3M-3Y (33)	6M-5Y (54)	9M-6Y (63)	18M-8Y (78)
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 (24)	6M-3Y (30)	9M-5Y (51)	1Y-5Y (48)	2Y-8Y (72)	3Y-10Y (84)	7Y-15Y (96)	15Y-30Y (180)
	P-1Y (12)	P-18M (18)	1M-2Y (23)	3M-3Y (33)	6M-5Y (54)	9M-6Y (63)	1Y-8Y (84)	2Y-9Y (84)
II	--- (N=1)	--- (N=1)	--- (N=0)	--- (N=0)	--- (N=0)	--- (N=0)	--- (N=0)	--- (N=0)
	2Y-5Y (36)	3Y-7Y (48)	5Y-8Y (36)	5Y-10Y (60)	8Y-15Y (84)	10Y-18Y (96)	12Y-20Y (96)	15Y-40Y (300)
	1Y-3Y (24)	18M-4Y (30)	2Y-5Y (36)	3Y-7Y (48)	5Y-8Y (36)	5Y-10Y (60)	7Y-12Y (60)	8Y-15Y (84)

NOTE: Seriousness category rankings range from VII to II for the drug offense matrix with category VII representing the least serious drug offenses and category II representing the most serious drug offenses. Seriousness category rankings range from VII to II for the property offense matrix with category VII representing the least serious property offenses and category II representing the most serious property offenses. Higher Offender Scores indicate a more extensive criminal justice history.



Issues for Comment:

1. The MSCCSP invites broad comment on the amendments to the Sentencing Matrix for Drug Offenses in COMAR 14.22.01.11D(2). Should the MSCCSP approve officially the tentatively approved amendments?

- 2: The MSCCSP invites broad comment on the amendments to the Sentencing Matrix for Property Offenses in COMAR 14.22.01.11E(2). Should the MSCCSP approve officially the tentatively approved amendments?