

 GUIDELINES  
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## **MSCCSP Revises Rule Concerning Use of PBJ in Calculation of Prior Adult Criminal Record (Effective September 8, 2008)**

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) has revised the rule concerning the use of probations before judgment (PBJ) in the calculation of the prior adult criminal record for the Maryland Sentencing Guidelines Worksheet. As of September 8, 2008, COMAR 14.22.01.10.B(3)(a)(i) states:

The prior adult criminal record includes all adjudications preceding the current sentencing event, whether the offense was committed before or after the instant one. **Unless expunged from the record or proven by the defense to have been eligible for expungement prior to the date of offense pursuant to Criminal Procedure Article §§10-101 – 10-105, Annotated Code of Maryland, probations before judgment (PBJ) and convictions under the Federal Youth Corrections Act (FYCA) shall be included.** The individual completing the worksheet may not consider violations of public local laws, municipal infractions, contempt, criminal non-support, and non-incarcerable traffic offenses as part of a prior adult criminal record.

Prior to this revision, PBJ dispositions were included as prior convictions unless formally expunged by order of the court.

The revised pages of the Maryland Sentencing Guidelines Manual are attached for your convenience. They may be printed and inserted in place of the affected pages of your hard copy of the January, 2008 Guidelines Manual.

## C. Prior Adult Criminal Record

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### 1. Criteria

If a Maryland offense has not been assigned a seriousness category and the offense has a maximum penalty of one year or less, the offense should be assigned a seriousness category of VII.

If a Maryland offense has not been assigned a seriousness category (and the offense has a maximum penalty of more than one year) or has been repealed from the Maryland Annotated Code, the individual completing the worksheet shall use the closest analogous offense and the sentencing judge and the parties shall be notified.

The sentencing guidelines and offense table in effect at the time of the instant sentencing shall be used to determine the correct seriousness category for each adjudication included in the calculation of the prior adult criminal record.

It is appropriate to use the sentencing guidelines and offense table in effect at the time of the instant sentencing to assign seriousness categories for previously convicted offenses because the calculation of the prior adult record is not a new sanction for a previously convicted offense but rather a single metric used to suggest an appropriate sentence in the instant offense.

To determine whether a defendant's prior adjudications of guilt constitute a Minor, Moderate, or Major adult criminal record, the person completing the worksheet shall count the number of prior adjudications of guilt according to their seriousness categories. If multiple prior convictions relate to a single criminal event, the individual completing the worksheet shall score only the offense with the highest seriousness category. The Criteria for Prior Record Worksheet, found in Figure 7-2, can be used to help with the tabulation.

Once the prior adjudications are categorized by their seriousness categories, the number of adjudications in the most serious category of offenses shall be identified. Locate that number and the seriousness category in Table 7-2 or Figure 7-1 and, applying the other less serious prior adjudications, determine

**Q: How do you calculate overall guidelines for a Single Criminal Event with multiple victims and less than two Category I or Category II offenses (i.e., “stacking rule”)?**

A: Identify the correct guidelines range for each offense. Calculate the overall upper guidelines range by adding the upper range for each victim. Calculate the overall lower guidelines range using the standard protocol. MSGM 10.1.

For example, an offender with an Offender Score of 0 has been adjudicated guilty for 2 counts of 1<sup>st</sup> degree Assault [CR, §3-202], a person offense, category III. There were two victims, neither of whom was injured, neither of whom had a special vulnerability, and the offender did not use a weapon – making a total Offense Score of 5. The guidelines range for Offender Score 0 and Offense Score 5 for each count of Robbery is 3M-4Y. The upper ranges should be added or “stacked” (to reflect two victims) so the correct overall guidelines range is 3M-8Y.

**Q: Are there instances when the guidelines should be adjusted due to unique circumstances (e.g., multiple victims, subsequent offender status)?**

A: Yes. See MSGM, Chapter 10 for a complete discussion of how to adjust the guidelines in these circumstances.

**Q: When determining an offender’s prior adult criminal record to determine the Offense Score, is a Nolo Contendre plea or a sentence to Probation Before Judgment (PBJ) considered an adjudication of guilt?**

A: Yes, a nolo contendere plea is an adjudication of guilt, as is a PBJ (unless expunged or proven by the defense to have been eligible for expungement prior to the date of offense). MSGM 7.1(C).

**Q: When calculating an offender’s prior adult criminal record, if an offender has been convicted of another offense but not yet sentenced—should that conviction be counted in the history?**

A: Yes, as stated above, an adjudication of guilt for each Criminal Event, regardless of whether it remains to be sentenced, should be included in calculating the adult criminal record. MSGM 7.1(C).

**Q: What is the difference between seriousness categories III-A, III-B, and III-C in the drug matrix?**

A: Seriousness category III-A is used for *Distribution of MDMA (ecstasy), 750 grams or more* [CR, §5-609(a)(9)] AND *Importation of marijuana, 45 kilograms or more* [CR, §5-614(a)(1)].

Seriousness category III-B is used for non-marijuana and non-MDMA offenses that have a seriousness category III, such as *Distribution of schedule I or II narcotics or hallucinogenics (e.g., heroin, cocaine, PCP, and LSD)* [CR, §5-608; CR, §5-609] or *Distribution of large amounts of controlled dangerous substance* [CR, §5-612(a)].