

Revisions to the Guidelines Offense Table and the Impact of Credited Time on Compliance, Effective November 1, 2010

Revisions to the Guidelines Offense Table

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) has revised the Guidelines Offense Table to reflect:

- (1) new offenses passed during the 2010 Legislative Session;
- (2) amended offenses passed during the 2010 Legislative Session; and
- (3) minor edits to the table.

These changes were submitted to the Code of Maryland Regulations (COMAR) and were adopted **effective November 1, 2010**. They are summarized briefly below. A print friendly version of the updated Guidelines Offense Table (Appendix A of the Maryland Sentencing Guidelines Manual) is available on the MSCCSP website at: www.msccsp.org/Files/Guidelines/offensetable.pdf. This file is searchable by key word, CJIS Code, Source, etc. Please discard any prior versions of the Guidelines Offense Table, as information contained within may no longer be accurate.

New Offenses, 2010 Legislative Session

Legislation	Statute	Offense	Statutory Maximum	Adopted Seriousness Category
Senate Bill 517	CR, §9-805	Criminal Gang Offenses Organize, supervise, finance, or manage a criminal gang	20 years	III
Senate Bill 280/ House Bill 473	CP, §11-724(b)(1)	Sexual Crimes Willfully and knowingly violating conditions of lifetime sexual offender supervision, 1 st offense	5 years	V
Senate Bill 280/ House Bill 473	CP, §11-724(b)(2)	Sexual Crimes Willfully and knowingly violating conditions of lifetime sexual offender supervision, subsequent	10 years	IV
House Bill 778	CR, §7-302(d)(3)(ii)	Telecommunications and Electronics, Crimes Involving Unauthorized computer access for sabotage of State government, public utilities, or other energy infrastructure, less than \$50,000	5 years	V

New Offenses, 2010 Legislative Session (cont.)

Legislation	Statute	Offense	Statutory Maximum	Adopted Seriousness Category
House Bill 778	CR, §7-302(d)(3)(i)	Telecommunications and Electronics, Crimes Involving Unauthorized computer access for sabotage of State government, public utilities, or other energy infrastructure, \$50,000 or greater	10 years	IV
House Bill 818/ Senate Bill 670	CR, §6-402(b)(2) CR, §6-403(c)(2)	Trespass Trespass on posted property or private property, 2 nd offense within 2 years after first violation	6 months	VII
House Bill 818/ Senate Bill 670	CR, §6-402(b)(3) CR, §6-403(c)(3)	Trespass Trespass on posted property or private property, 3 rd and subsequent offense within 2 years after preceding violation	1 year	VII

Amended Offenses, 2010 Legislative Session

Legislation	Statute	Offense	Prior Stat. Max. / Seriousness Category	New Stat. Max. / Seriousness Category
House Bill 365	CR, §3-203(c)	Assault and Other Bodily Woundings Assault on law enforcement officer or parole or probation agent, 2nd degree ^a	10 years / V	10 years / V ^b
Senate Bill 517	CR, §9-804(c)(1)(i)	Criminal Gang Offenses Participate as member of criminal gang in commission of crime ^c	10 years / One category more serious than most serious underlying offense. If no conviction on underlying offense, category=IV	10 years / One category more serious than most serious underlying offense. If no conviction on underlying offense, category=IV ^b
Senate Bill 517	CR, §9-804(c)(1)(ii)	Criminal Gang Offenses Participate as member of criminal gang in commission of crime resulting in death of victim ^c	20 years / One category more serious than most serious underlying offense. If no conviction on underlying offense, category=III	20 years / One category more serious than most serious underlying offense. If no conviction on underlying offense, category=III ^b
Senate Bill 622/ House Bill 254	CR, §3-304(c)(2)	Sexual Crimes Rape, 2nd degree, adult offender with victim younger than 13 years old	20 years / II (MM=5 years)	LIFE / II ^b (MM=15 years)

^aThe Legislature added parole and probation agents to the classes of law enforcement officers covered by the offense Assault – Law Enforcement Officers. There was no change to the penalty structure.

^bNo change to seriousness category.

^cThe Legislature altered the definition of “criminal gang” for purposes of the gang statute and expanded the list of underlying crimes for criminal gang activity. There was no change to the penalty structure.

MM = Non-suspendable mandatory minimum penalty.

Amended Offenses, 2010 Legislative Session (cont.)

Legislation	Statute	Offense	Prior Stat. Max. / Seriousness Category	New Stat. Max. / Seriousness Category
Senate Bill 622/ House Bill 254	CR, §3-306(c)(2)	Sexual Crimes Sex Offense, 2nd degree, adult offender with victim younger than 13 years old	20 years / II (MM=5 years)	LIFE / II ^b (MM=15 years)

^b No change to seriousness category.

MM = Non-suspendable mandatory minimum penalty.

Impact of Credited Time on Sentencing Guidelines Compliance

The MSCCSP has deemed a sentence compliant with the guidelines range if the judge sentenced a defendant to a period of pre-sentence incarceration time with no additional post-sentence incarceration time and the length of credited pre-sentence incarceration exceeds the upper guidelines range for the case. In other words, judges are not “penalized” for an above the guidelines sentence if the sentence only includes credited pre-incarceration time.

The revised pages of the Maryland Sentencing Guidelines Manual reflecting the above change are attached for your convenience (pp. 55 and 57). They may be printed and inserted in place of the affected pages of your hard copy of the May 2010 Guidelines Manual.

Determining Whether a Sentence is Within the Guidelines Range

The recommended guidelines sentence is provided as a range. This range is determined by the seriousness of the offense and the criminal history of the offender. This chapter discusses how to determine if a sentence is within the guidelines range.

13.1 Suspended Time

Suspended time *is not* considered in determining whether the sentence falls within the recommended guidelines range. The guidelines range represents only non-suspended time.

Example: If the guidelines range for a particular case is 6 to 12 years, a few examples of sentences within the guidelines are 10 years with 4 years suspended or 15 years with 5 years suspended. If, however, a judge gives 6 years, all suspended, the sentence will be outside the guidelines.

13.2 Credit for Time Served

Time served *is* considered in determining whether the sentence falls within the recommended guidelines range. If a judge sentences an offender to pre-sentence incarceration time with no additional post-sentence incarceration time and the length of credited pre-sentence incarceration exceeds the upper range, then the sentence is deemed guidelines compliant.

Example 1: If the guidelines range for an event is 3 months to 9 months, and an offender is sentenced to 6 months with credit for 6 months already served, the sentence is within the guidelines range.

Example 2: If the guidelines range for an event is Probation to 3 months, and an offender is sentenced to 6 months with credit for 6 months already served, the sentence is deemed to be compliant with the guidelines.

13.7 Sentences Deemed to Be Within Guidelines

Notwithstanding the actual guidelines range, the State Commission on Criminal Sentencing Policy shall deem a sentence within the guidelines range if a judge:

- Approved an ABA plea agreement and sentence agreed to by both the defendant and by the State;
- Sentenced a defendant to a period of pre-sentence incarceration time with no additional post-sentence incarceration time and the length of credited pre-sentence incarceration exceeds the upper guidelines range for the case; or
- Imposed a sentence of correctional options if the defendant's:
 - (1) Initial sentence plus any suspended sentence falls within or above the overall guidelines range; and
 - (2) Current sentence or sentences and any pending charges do not include a violation of:
 - (a) A crime of violence under CR, §14-101;
 - (b) Sexual child abuse under CR, §3-602;
 - (c) Escape;
 - (d) A law of the United States or of any other state or the District of Columbia similar to §B(2)(a)—(c) of this regulation.

If the conditions of (1) and (2) are established, then mark “Yes” on the Sentencing Guidelines Worksheet in the Corrections Options box to show that the program is consistent with Commission criteria.