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### **Criminal Nonsupport and Contempt are No Longer Guidelines Offenses**

The MSCCSP has revised the Maryland Sentencing Guidelines Manual (MSGM) to exclude *criminal nonsupport* (FL, §10-203) and *criminal contempt* (Common Law) from guidelines coverage. Given the inconsistency in how these cases are handled and the arguably atypical characteristics of the offenses, the MSCCSP has determined that *criminal nonsupport* and *criminal contempt* should no longer be classified as guidelines offenses. Chapters 1 and 2 of the MSGM covering the scope of the guidelines and key definitions have been revised accordingly. The affected pages of the MSGM (pp. 1, 2, and 4) are attached for your convenience. These changes were adopted in the applicable sections of the Code of Maryland Regulations (COMAR) effective November 1, 2016.

### **Revisions to Computation of Prior Adult Criminal Record**

The MSCCSP has revised the instructions in the MSGM for scoring the prior adult criminal record, excluding prior adjudications if the act on which the adjudication was based is no longer a crime OR if the adjudication was expunged from the record or proven by the defense to have been eligible for expungement prior to the date of the instant offense. This change to the computation of the prior adult criminal record is in accordance with recent changes to Maryland law reflecting legislatively-determined changing societal views concerning the collateral consequences of criminal records. Chapter 7, Section 1C of the MSGM covering computation of the prior adult criminal record has been revised accordingly. The affected pages of the MSGM (pp. 25, 26, and 30) are attached for your convenience. These changes were adopted in the applicable sections of the Code of Maryland Regulations (COMAR) effective November 1, 2016.

### **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 2016 Legislative Session with enactment dates on or before October 1, 2016;
- (2) amended offenses passed during the 2016 Legislative Session with enactment dates on or before October 1, 2016;
- (3) adopted seriousness categories for previously unclassified offenses; and
- (4) minor edits to the table.

These changes were adopted in the Code of Maryland Regulations (COMAR) **effective November 1, 2016**. 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](http://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 in prior versions may no longer be accurate.

#### New Offenses, 2016 Legislative Session

Legislation	Offense	Statute	Statutory Maximum	Adopted Seriousness Category
Chapters 517/518 SB 160/HB 157	<b>Assault and Other Bodily Woundings</b> Cause a life threatening injury by motor vehicle or vessel while under the influence of alcohol, <b>subsequent</b>	CR, §3-211(c)(3)(ii)	5Y	V
Chapters 517/518 SB 160/HB 157	<b>Assault and Other Bodily Woundings</b> Cause a life threatening injury by motor vehicle or vessel while impaired by alcohol, <b>subsequent</b>	CR, §3-211(d)(3)(ii)	5Y	V
Chapters 517/518 SB 160/HB 157	<b>Assault and Other Bodily Woundings</b> Cause a life threatening injury by motor vehicle or vessel while impaired by drugs, <b>subsequent</b>	CR, §3-211(e)(3)(ii)	5Y	V
Chapters 517/518 SB 160/HB 157	<b>Assault and Other Bodily Woundings</b> Cause a life threatening injury by motor vehicle or vessel while impaired by a controlled dangerous substance, <b>subsequent</b>	CR, §3-211(f)(4)(ii)	5Y	V
Chapters 517/518 SB 160/HB 157	<b>Manslaughter and Related Crimes</b> Manslaughter—by vehicle or vessel, <b>subsequent</b>	CR, §2-209(d)(2)	15Y	III
Chapters 517/518 SB 160/HB 157	<b>Manslaughter and Related Crimes</b> Criminally negligent manslaughter by vehicle or vessel, <b>subsequent</b>	CR, §2-210(f)(2)	5Y	V
Chapters 517/518 SB 160/HB 157	<b>Manslaughter and Related Crimes</b> Negligent homicide by vehicle or vessel while under the influence of alcohol, <b>subsequent</b>	CR, §2-503(c)(2)	10Y	IV
Chapters 517/518 SB 160/HB 157	<b>Manslaughter and Related Crimes</b> Negligent homicide by vehicle or vessel while impaired by alcohol, drugs, or CDS, <b>subsequent</b>	CR, §2-504(c)(2) CR, §2-505(c)(2) CR, §2-506(c)(2)	5Y	V
Chapters 456/457 SB 969/HB 1236	<b>Motor Vehicle Offense</b> Knowingly sell, offer, install, reinstall, import, misrepresent, etc., a counterfeit, nonfunctional, or no airbag	TR, §22-419	5Y	VI
Chapter 478 HB 188	<b>Surveillance and Other Crimes Against Privacy</b> Unauthorized disclosure of information obtained or generated by examining licensed persons, etc.	FI, §2-117	2Y	VI

New Offenses, 2016 Legislative Session (*continued*)

Legislation	Offense	Statute	Statutory Maximum	Adopted Seriousness Category
Chapter 478 HB 188	<b>Surveillance and Other Crimes Against Privacy</b> Unauthorized disclosure of information obtained or generated by examining banking institutions and credit unions, etc.	FL, §2-117.1	2Y	VI

## Amended Offenses with Changes to the Incarceration Penalty, 2016 Legislative Session

Legislation	Offense	Statute	Prior Stat. Max. / Seriousness Category	New Stat. Max. / Seriousness Category
Chapters 199/200 SB 393/HB 490	<b>Fraud, Miscellaneous</b> Violate certain provisions of Health Occupations Article, Title 8 (Nurses), Subtitle 7 (Prohibited Acts; Penalties)	HO, §8-710	1Y / VII	5Y / VI

## Adopted Seriousness Categories for Previously Unclassified Offenses

Offense	Statute	Statutory Maximum	Offense Type	Adopted Seriousness Category
<b>Boating Offenses</b> Operate a vessel while under the influence of alcohol, 1 <sup>st</sup> offense	NR, §8-738(e)(1)(i)	1Y	Person	VII
<b>Boating Offenses</b> Operate a vessel while under the influence of alcohol, 2 <sup>nd</sup> offense	NR, §8-738(e)(1)(ii)	2Y	Person	VI
<b>Boating Offenses</b> Operate a vessel while under the influence of alcohol, 3 <sup>rd</sup> or subsequent offense	NR, §8-738(e)(1)(iii)	3Y	Person	V
<b>Election Offenses</b> Voter registration offenses	EL, §16-101	5Y	Property	VII
<b>Election Offenses</b> Neglect of official duties by election official or official of political party	EL, §16-301	3Y	Property	VII
<b>Election Offenses</b> Tampering with voting equipment	EL, §16-802	3Y	Property	VI
<b>Election Offenses</b> Removal or destruction of equipment or supplies	EL, §16-803	3Y	Property	VI
<b>Election Offenses</b> Falsely or fraudulently making, defacing, or destroying a certificate of candidacy or nomination	EL, §16-901	3Y	Property	VI

Adopted Seriousness Categories for Previously Unclassified Offenses (*continued*)

<b>Offense</b>	<b>Statute</b>	<b>Statutory Maximum</b>	<b>Offense Type</b>	<b>Adopted Seriousness Category</b>
<b>Election Offenses</b> Unlawful actions by an election judge	EL, §16-303	2Y	Property	VII
<b>Election Offenses</b> Violate any provision of Election Law Article, Title 9 (Voting), Subtitle 3 (Absentee Voting)	EL, §9-312	2Y	Property	VII

## Scope

The Maryland sentencing guidelines apply to criminal cases prosecuted in a Circuit Court. The following sentencing matters handled by judges in a Circuit Court are excluded from guidelines coverage:

- Prayers for jury trial from District Court, UNLESS a pre-sentence investigation (PSI) is ordered;
- Appeals from District Court, UNLESS a PSI is ordered;
- Crimes that carry no possible penalty of incarceration;
- Public local laws and municipal ordinances;
- Sentencing hearings in response to a violation of probation; and
- Criminal nonsupport and criminal contempt.

For additional details pertaining to sentencing guidelines coverage, see Figure 1-1 on the next page.

Pursuant to Criminal Procedure Article (CP), §6-211(b), Annotated Code of Maryland, the sentencing guidelines are voluntary and may not be construed to require a court to sentence a defendant as prescribed by the guidelines.

A list of many Maryland criminal offenses and their corresponding seriousness categories appear in Appendix A. If an offense is not listed in Appendix A and the offense has a maximum penalty of one year or less, the offense should be identified as a seriousness category VII offense. If an offense is not listed in Appendix A and the maximum penalty is greater than one year, the individual completing the worksheet should use the seriousness category for the closest analogous offense and the sentencing judge and the parties should be notified.

Please note that the Maryland Sentencing Guidelines Manual (MSGM) is not law and it is provided for illustrative purposes only. The guidelines are codified in Title 14, Independent Agencies, Subtitle 22, Commission on Criminal Sentencing Policy in the Code of Maryland Regulations (COMAR). If there is any dispute or question regarding the content contained in the MSGM, the user should review the specific language under COMAR for clarification.

COMAR is provided for online viewing by the State of Maryland, Division of State Documents at [www.dsd.state.md.us](http://www.dsd.state.md.us) and by the Commission at [www.msccsp.org/About/COMAR](http://www.msccsp.org/About/COMAR).

For further information on the MSCCSP, including the most recent changes to the sentencing guidelines and to the MSGM, please visit the Commission’s website.

**Figure 1-1. Sentencing Guidelines Coverage.**

<b>For Cases Originating in Circuit Court</b>	
<b>Sentencing Guidelines Worksheet Required</b>	<b>Sentencing Guidelines Worksheet <u>Not</u> Required</b>
<ul style="list-style-type: none"> <li>• Offenses originally prosecuted in Circuit Court</li> <li>• All pleas, including American Bar Association (ABA) pleas, non-binding pleas, and pleas of <i>nolo contendere</i> (no contest) by the offender</li> <li>• Sentences to probation before judgment (PBJ)</li> <li>• Initial sentences with a condition of drug court or an inpatient commitment under Health General Article, Title 8, Subtitle 5, Annotated Code of Maryland</li> <li>• Reconsiderations for a Crime of Violence (as defined in Criminal Law Article, §14-101, Annotated Code of Maryland) if there is an adjustment to the active sentence</li> <li>• Three-judge panel reviews if there is an adjustment to the active sentence</li> </ul>	<ul style="list-style-type: none"> <li>• Violations of public local laws and municipal ordinances</li> <li>• Offenses that carry no possible penalty of incarceration</li> <li>• Criminal nonsupport and criminal contempt</li> <li>• Cases in which the offender was found not criminally responsible (NCR)</li> <li>• Sentencing hearings in response to a violation of probation</li> <li>• Reconsiderations for offenses other than a Crime of Violence</li> <li>• Reconsiderations for a Crime of Violence if there is <u>NOT</u> an adjustment to the active sentence</li> <li>• Three-judge panel reviews if there is <u>NOT</u> an adjustment to the active sentence</li> </ul>
<b>For Cases Originating in District Court</b>	
<b>Sentencing Guidelines Worksheet Required</b>	<b>Sentencing Guidelines Worksheet <u>Not</u> Required</b>
<ul style="list-style-type: none"> <li>• Prayers for a jury trial if a pre-sentence investigation (PSI) is ordered</li> <li>• Appeals from District Court if a PSI is ordered</li> </ul>	<ul style="list-style-type: none"> <li>• Prayers for a jury trial if a PSI is <u>NOT</u> ordered</li> <li>• Appeals from District Court if a PSI is <u>NOT</u> ordered</li> </ul>

- departure** A judicially imposed sentence that falls outside of the recommended sentencing guidelines range. Departure does not include any sentence that complies with at least one of the requirements that deem a sentence to be within the guidelines as set forth in MSGM 13.6.
- drug offense** An offense involving controlled dangerous substances or paraphernalia.
- economic loss** For all offenses involving theft and related crimes under Criminal Law Article (CR), Title 7, or fraud and related crimes under CR, Title 8, Annotated Code of Maryland, economic loss equals the amount of restitution ordered by a Circuit Court judge or, if not ordered, the full amount of restitution that could have been ordered.
- guidelines offense** Offense prosecuted in a Circuit Court.  
Guidelines offenses *include* the following types of cases:
- New trials; and
  - Reconsiderations imposed on a defendant for a crime of violence (as defined in CR, §14-101) and reviews.<sup>1</sup>
- Guidelines offenses *do not* include the following types of cases:
- Prayers for jury trial from District Court, UNLESS a PSI is ordered;
  - Appeals from District Court, UNLESS a PSI is ordered;
  - Offenses that carry no possible penalty of incarceration;
  - Public local laws and municipal ordinances;
  - Sentencing hearings in response to a violation of probation; and
  - *Criminal nonsupport* and *criminal contempt*.
- guidelines range** The recommended sentencing range for offenders who fall within a particular cell of the person, drug, and property offense sentencing matrices. The adjusted guidelines range refers to the range after adjusting for matters such as statutory maximums and mandatory minimums.
- judge** The trial judge who imposes or alters a sentence or a panel of trial judges who alter a sentence.

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<sup>1</sup> A sentencing guidelines worksheet should be completed for reconsiderations imposed on a defendant for a crime of violence (as defined in CR, §14-101) and reviews if an adjustment was made to the active, original sentence.

## C. Prior Adult Criminal Record

Except as noted in this paragraph below, the prior adult criminal record includes all adjudications preceding the current sentencing event, whether the offense was committed before, during, or after the instant offense(s). The prior adult criminal record shall not include:

- i. adjudications that were expunged from the record or proven by the defense to have been eligible for expungement as a matter of right prior to the date of offense pursuant to Subtitle 1 (Expungement of Police and Court Records) of Title 10 (Criminal Records) of the Criminal Procedure Article, Annotated Code of Maryland;
- ii. violations of public local laws, municipal infractions, contempt, criminal nonsupport;
- iii. marijuana possession or marijuana paraphernalia possession adjudications that qualify for a non-incarceration penalty due to evidence of medical necessity;
- iv. adjudications based on acts that are no longer crimes; or
- v. non-incarcerable traffic offenses.

### 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 Annotated Code of Maryland, but the act on which the repealed offense is based is still a crime, 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 sentencing guidelines 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 whether the prior record is Minor, Moderate, or Major. If the defendant has no prior adult criminal record, the individual completing the worksheet shall assign a score of 0. If the defendant has a Minor adult criminal record, the individual completing the worksheet shall assign a score of 1. If the defendant has a Moderate criminal record, the individual completing the worksheet shall assign a score of 3. If the defendant has a Major criminal record, the individual completing the worksheet shall assign a score of 5.

## 2. Additional Instructions

**Different Criminal Events Sentenced Together.** If multiple offenses from different criminal events are being sentenced together at this sentencing event, the offender's criminal record includes any adjudication of guilt prior to the current sentencing and is the same for each offense being sentenced at this time.

**Convictions Out of Jurisdiction.** If an offender has been convicted in another jurisdiction, the convicted offense shall be matched as closely as possible to the closest analogous Maryland offense. If no Maryland analogous offense exists, the offense shall be placed in the lowest seriousness category (VII), and the judge and parties shall be notified. If the out of jurisdiction conviction is based on act that is not a criminal violation in Maryland (e.g., marijuana possession less than 10 grams), then the out of jurisdiction conviction shall be excluded from the prior adult criminal record. If there is a question as to the analogous guidelines offense for an out-of-state conviction, that question should be brought to the attention of the judge at sentencing.

**Theft-Type Offenses.** A theft conviction that occurred before the enactment of the comprehensive theft statute in 1978 (such as larceny, larceny by trick, or larceny after trust) should be considered misdemeanor theft if it was a misdemeanor and felony theft if it was a felony.

**Criminal Record Decay Factor.** If an offender has lived in the community for at least ten years prior to the instant offense without criminal justice system involvement resulting from an adjudication of guilt or a plea of nolo contendere, the criminal record shall be reduced by one level: from Major to Moderate, from Moderate to Minor, or from Minor to None. An offender was in the criminal justice system if the offender was on parole, on probation, incarcerated, on work release, on mandatory supervision, was an escapee, or had a comparable status. An offender is not considered to be in the criminal justice system if the offender was on unsupervised probation for an offense not punishable by imprisonment.

**Conspiracies, Attempts, Solicitations, and Accessoryships.** For instructions regarding conspiracies, attempts, solicitations, and accessoryships, please see MSGM 5.2.

### D. Prior Adult Parole/Probation Violations

Score 0 if offender has never before been on adult parole, probation or equivalent supervisory status, or has successfully completed previous periods of supervision as an adult. Score 1 if offender was ever adjudicated in violation of parole or probation or was convicted of an offense while on parole or probation, unless the adjudication or conviction arose from the offense or offenses of this sentencing event. **Do not give a point simply because offender was on parole or probation at the time of the instant offense;** the offender will already have been penalized for having a relationship to the criminal justice system when the instant offense occurred.

**The total offender score** is obtained by adding the points assigned to each element of the offender score. The maximum offender score is 9; the minimum is 0.