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Policy Statement Encouraging the Use of Alternatives to Incarceration

The Justice Reinvestment Act (Senate Bill 1005/Ch. 515, Sec. 8, 2016) required the MSCCSP to study how more alternatives to incarceration may be included in the sentencing guidelines and to submit a report of the findings and recommendations to the Justice Reinvestment Oversight Board, Governor, and General Assembly by January 1, 2018. The MSCCSP's study of alternatives included a review of how corrections options are currently included in the sentencing guidelines, two resources to help identify evidence-based alternatives to incarceration, an analysis of how other states incorporate alternatives into their sentencing guidelines, an inventory of alternatives available in each jurisdiction in Maryland, and recommendations (the full [study report](#) is available on the MSCCSP website). Among the study's recommendations is that the MSCCSP adopt a policy statement encouraging the use of alternatives to incarceration, where appropriate.

At its meeting on December 11, 2017, the MSCCSP voted to adopt a policy statement and to include the policy statement in the preface of the Maryland Sentencing Guidelines Manual (MSGM). The statement encourages judges to consider at sentencing evidence-based or innovative alternatives to incarceration that are appropriate for defendants based on their specific risks and needs. The revised preface of the MSGM (pp. ii-iii) containing the policy statement is attached for your convenience. The revised MSGM title page is also attached.

The policy statement is consistent with the MSCCSP's 2001 decision to support the use of specified alternatives by deeming sentences to corrections options (such as home detention, drug court, and Health General Article, § 8-507 commitments) as guidelines compliant provided that the initial sentence plus any suspended sentence falls within or above the applicable guidelines range and the case does not include a crime of violence, child sexual abuse, or escape. The policy statement, in conjunction with the corrections options compliance rule, demonstrates the MSCCSP's interest in promoting alternatives to incarceration, where appropriate.

Revisions to the Guidelines Offense Table, Effective April 1, 2018

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

- (1) the addition of CJIS Codes for offenses amended by the Justice Reinvestment Act;
- (2) the addition of CJIS Codes for new and amended offenses passed during the 2017 Legislative Session; and
- (3) other minor edits to the table.

These changes were adopted in the Code of Maryland Regulations (COMAR) **effective April 1, 2018**. A print friendly version of the updated [Guidelines Offense Table](#) (Appendix A of the Maryland Sentencing Guidelines Manual) is available on the MSCCSP website. 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.

Preface

The Maryland sentencing guidelines cover most criminal cases originating in a Circuit Court. Based on sentencing experience in Maryland, the guidelines were first developed, with staff assistance, by a board of judges, legislators and other representatives of the criminal justice system.

The chief goals of the Maryland sentencing guidelines are:

1. To increase equity in sentencing by reducing unwarranted disparity, including any racial disparity, while retaining judicial discretion to individualize sentences;
2. To articulate an explicit sentencing policy while providing a regular basis for policy review and change;
3. To provide information for new or rotating judges; and
4. To promote increased visibility and aid public understanding of the sentencing process.

Sentencing guidelines make it possible to take into account systematically and publicly the most common variations in offenders and their offenses, within the current sentencing framework. In cooperation with the judiciary, State's Attorneys, Public Defenders, and others in the criminal justice system, the Maryland State Commission on Criminal Sentencing Policy (MSCCSP or Commission) can help achieve systematic sentencing by identifying and assigning weights to core, objective factors for consideration by judges in making sentencing decisions. It should be emphasized that sentencing guidelines are, as the name indicates, guidelines to assist judges in sentencing. The guidelines are not mandatory. Guidelines complement rather than replace the judicial decision-making process and the proper exercise of judicial discretion.

The MSCCSP welcomes interest in its activities and information resources. Since judicial use of the State's sentencing guidelines is voluntary, the MSCCSP and its staff do not provide advisory opinions or otherwise get involved in pending court cases. In any situation of confusion, refer to the judge for the ultimate decision.

The sentencing guidelines and offense seriousness categories in effect at the time of sentencing shall be used to calculate the guidelines. This current manual should be used in place of the previous versions. Please discard the previous versions and start using the new manual immediately. If it is determined that the guidelines are different than what they would have been if calculated using the sentencing guidelines and offense seriousness categories in effect on the date the offense of conviction was committed, the State's Attorney or defense counsel may bring this to the attention of the judge as a consideration for departure from the guidelines.

Policy Statement Encouraging the Use of Alternatives to Incarceration When Appropriate

The MSCCSP encourages judges to consider at sentencing evidence-based or innovative alternatives to incarceration that are appropriate for defendants based on their specific risks and needs. The mandate of Maryland's Justice Reinvestment Act (JRA) (Chapter 515 of 2016) that the Division of Parole and Probation administer risk-needs assessments on individuals under their supervision and develop individualized case plans that take into consideration evidence-based or innovative programs, highlights the value the State places on the use of alternatives for suitable offenders.¹ This approach is also consistent with research on the effectiveness of alternatives to incarceration relative to imprisonment that has overwhelmingly concluded that imprisonment does not reduce re-offending relative to community sanctions (Villettaz, Gillieron, and Killias, 2015).² The research findings, when combined with the collateral consequences experienced by incarcerated individuals and their family members (Collateral Consequences Workgroup, 2016),³ suggest there is a potential public safety and community benefit to limiting exposure to incarceration, especially for offenders who are a low-risk to recidivate.

Therefore, in accordance with the JRA and criminological research, the MSCCSP recommends that judges consider utilizing alternatives to incarceration at sentencing, provided that such alternatives are appropriate based on the defendant's specific risks and needs.⁴ For chemically dependent offenders, the MSCCSP encourages treatment in lieu of incarceration.

¹ Evidence-based programs and practices are programs proven by scientific research to reliably produce reductions in recidivism (JRA 2016). Innovative programs and practices are programs that do not meet the higher standards of the evidence-based practices, but preliminary research or data indicate they will reduce the likelihood of offender recidivism (JRA 2016).

² Villettaz P., Gillieron G., and Killias M. *The Effects on Re-offending of Custodial vs. Non-custodial Sanctions: An Updated Systematic Review of the State of Knowledge*. Campbell Systematic Reviews 2015:1. DOI: 10.4073/csr.2015.1

³ Collateral Consequences Workgroup (2016). *The Final Report of the Collateral Consequences Workgroup*. Retrieved from: <https://gocep.maryland.gov/wp-content/uploads/collateral-consequences-final-report-2016.pdf>

⁴ See MSGM 13.7 for an explanation of guidelines compliance with respect corrections options, and see MSGM 2 for the definition of corrections options.



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Maryland Sentencing Guidelines Manual

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October 1, 2017 MSGM with Updated April 1, 2018 Offense Table (Appendix A)
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