



# Guidelines E-News

Vol. 18, No. 2 – April 2023



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### Impact of Recent Cannabis Legislation on the Sentencing Guidelines

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) has adopted revisions to the sentencing guidelines due to cannabis legislation effective January 1, 2023—Ch. 26 (H.B. 837), Acts of 2022. The legislation, as it impacts the sentencing guidelines: (1) substitutes the term *marijuana* with *cannabis*, (2) decriminalizes possession of 2.5 ounces or less of cannabis, (3) reduces the maximum penalty from 5 years to 3 years for *unlawfully possess with intent to distribute, manufacture, possess production equipment—cannabis*, and (4) decriminalizes *possess or distribute controlled paraphernalia—cannabis*.

### **Regulations, Guidelines Manual, and Guidelines Offense Table**

To account for the legislative changes, the MSCCSP issued new versions of the [Maryland Sentencing Guidelines Manual](#) (MSGM, version 15.0) and the [Guidelines Offense Table](#) (Appendix A of the MSGM), and the corresponding updates were adopted in the Code of Maryland Regulations (COMAR), effective April 1, 2023. Key MSGM changes include replacing the term *marijuana* with *cannabis* throughout and updated sample cases, and key Guidelines Offense Table changes are summarized in the following table.

Summary of Key Changes to the Guidelines Offense Table					
Legislation	Annotated Code of Maryland	Offense	Prior Stat. Max. / Seriousness Category	New Stat. Max. / Seriousness Category	Explanation
Chapter 26 (HB0837)	CR, §5-602(b)(1) CR, §5-603(b) CR, §5-607(a)(2) (penalty)	<del>CDS and Paraphernalia</del> Unlawfully possess with the intent to distribute, manufacture, possess production equipment—cannabis	5 years / IV	3 years / V	In response to the decrease in the maximum penalty from 5 years to 3 years, the MSCCSP revised the offense seriousness category from IV to V, effective April 1, 2023.
Chapter 26 (HB0837)	CR, §5-620(d)(2)	<del>CDS and Paraphernalia</del> <del>Paraphernalia—possess or distribute controlled paraphernalia—cannabis</del>	1 year / VII	N/A	This offense is decriminalized, effective January 1, 2023. Since the guidelines apply only to criminal offenses, this offense was removed from the Guidelines Offense Table.

### **Prior Adult Criminal Record**

Per guidelines rule, adjudications based on acts that are no longer crimes should be excluded from the prior adult criminal record (MSGM, chapter 7.1, p. 26). As such, cannabis possession should accordingly be excluded from the calculation of the prior adult criminal record if:

- It can be determined that a prior adjudication for cannabis possession involved 2.5 ounces or less, and/or
- The offense has been 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 the instant offense.

Unless otherwise eligible for expungement, calculation of the prior record remains unchanged for possession involving *more than* 2.5 ounces of cannabis, as this offense remains punishable by up to 6 months incarceration and/or a \$1,000 fine, pursuant to CR, § 5-601(c)(2)(i).

### **MAGS Alert Message Removed**

In June 2022, the Maryland Automated Guidelines System (MAGS) and Guidelines Calculator Tool (GLCT) were programmed to account for revisions to the sentencing matrices for drug and property offenses taking effect July 1, 2022. To encourage proper calculation of the guidelines, an alert message was programmed to populate on the Offense/Offender Score tab when the sentencing event involved an offense seriousness category and offender score combination whose guidelines range was revised effective July 1, 2022. MAGS users were prompted to select whether the sentence date would take place on or after July 1, 2022, and the guidelines were calculated accordingly. Further, on the GLS/Overall Sentence tab, the guidelines were automatically updated, if necessary, to correspond to those in effect based on the sentencing date entered.

Given that most of the sentencing-guidelines worksheets now being initiated have a sentence date after July 1, 2022, the alert message was removed from the Offense/Offender Score tab effective March 29, 2023, and the guidelines are automatically calculated to reflect the revised ranges that are currently in effect. However, please note that if a sentence date is entered on the GLS/Overall Sentence tab that precedes July 1, 2022, the guidelines will automatically update to reflect the range that was in effect based on the sentencing date.