

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Independent Agencies**
(DLS Control No. 14-293)

Overview and Legal and Fiscal Impact

These regulations (1) clarify that the sentencing guidelines in effect at the time of sentencing are to be used, but add that the State or the defendant may bring to the attention of the court any different guideline in effect on the date of the offense; (2) clarify the instructions for scoring guidelines for accessory offenses; and (3) amend the instructions for calculating an offender score in light of the changes decriminalizing possession of certain amounts of marijuana.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Independent Agencies:

Commission on Criminal Sentencing Policy:

General Regulations: COMAR 14.22.01.03, .08, .09, and .10

Legal Analysis

Background

The Commission on Criminal Sentencing Policy was created to support fair and proportional sentencing policy, increase equity in criminal sentencing practice, promote increased visibility, and aid public understanding of the sentencing process. The commission is responsible for oversight of the State's voluntary sentencing guidelines; collecting sentencing guidelines worksheets; maintaining the sentencing guidelines database; monitoring circuit court sentencing practice; adopting changes to the guidelines consistent with the legislative intent when necessary; and providing training and orientation to criminal justice practitioners who apply the sentencing guidelines.

Summary of Regulations

Regulation .03 clarifies that guidelines in effect at the time of sentencing are to be used to calculate sentencing. Nevertheless, the State's Attorney or defense counsel may bring to the attention of the sentencing judge any differences in effect as of the date of the offense, for the consideration of the court in departing from the current guidelines.

Regulation .08, which deals with guidelines scoring, is amended to advise that, unless placed in a different category or specifically addressed by a separate statute, a conspiracy, attempt, or solicitation is to be considered in the same seriousness category as the underlying offense. The regulation is also amended to establish that, if the accessory after the fact has a penalty of five years or greater under the statute, a seriousness category of V must be assigned, unless the underlying offense has a seriousness category of less than V, in which case the accessory after the fact is to be assigned the same seriousness category as the underlying offense. For cases of conspiracy, attempt, solicitation, or accessoryship, the substantive illegal activity involved and the citation to the substantive offense in the Code should be specified. 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 is to be assigned the lowest seriousness category (VII), but if the maximum penalty is greater than one year, the individual completing the worksheet should use the closest analogous offense, and the sentencing judge and the parties should be notified.

Regulation .09 is amended to establish that, if the accessory after the fact has a penalty of five years or greater under the statute, a seriousness category of V should be assigned, unless the underlying offense has a seriousness category of less than V, in which case, the same seriousness category as the underlying offense should be assigned.

Regulation .10 is amended to prohibit, in the computation of an offender score, the use of a conviction for possessing less than 10 grams of marijuana under statutory provisions in effect from October 1, 2012 to September 30, 2014. Finally, if an accessory after the fact has a penalty of five years or greater, a seriousness category of V should assigned, unless the underlying offense has a seriousness category of less than V, in which case the same seriousness category as the underlying offense should be assigned.

Legal Issue

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The sentencing commission cites § 6-211 of the Criminal Procedure Article as legal authority for the regulations. Section 6-211 requires the sentencing commission to adopt as regulations sentencing guidelines and any changes to those sentencing guidelines. This authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The commission advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The commission advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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