

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	10/09/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 11/14/2014

2. COMAR Codification

Title Subtitle Chapter Regulation

14	22	01	03
14	22	01	08
14	22	01	09
14	22	01	10

3. Name of Promulgating Authority

Commission on Criminal Sentencing Policy

4. Name of Regulations Coordinator

David A Soule

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5. Name of Person to Call About this Document

Stacy Najaka

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301-403-2709

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6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: October 7, 2014.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

:

Md. R

(vol.) (issue)

(page nos)

(date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Stuart Nathan, Assistant Attorney General, (telephone #410-585-3070) on October 9, 2014. A written copy of the approval is on file at this agency.

Name of Authorized Officer

David Soule

Title

Telephone No.

Executive Director

301-403-2707

Date

October 9, 2014

**Title 14
INDEPENDENT AGENCIES**

Subtitle 22 COMMISSION ON CRIMINAL SENTENCING POLICY

14.22.01 General Regulations

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Subtitle 22 COMMISSION ON CRIMINAL SENTENCING POLICY

14.22.01 General Regulations

Authority: Criminal Procedure Article, §6-211, Annotated Code of Maryland.

Notice of Proposed Action

□

The Maryland State Commission on Criminal Sentencing Policy proposes to amend Regulations .03, .08, .09 and .10 under COMAR 14.22.01 General Regulations.

This action was considered by the Maryland State Commission on Criminal Sentencing Policy at open meetings held on May 6, 2014, July 15, 2014, and September 30, 2014, notice of which was given by publication in the Maryland Register and on the MSCCSP website, pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to amend COMAR 14.22.01 to: 1) Clarify the guidelines in effect at the time of sentencing shall be used, but also adding that the state or defense may bring to the attention of judge if the guidelines in effect on the date of offense would have been different; 2) Clarify instructions for scoring the guidelines for accessory offenses; 3) Amend the instructions for the calculation of the Offender Score to indicate that convictions for the use or possession of less than 10 grams of marijuana

under CR, §5-601(c)(2)(ii), in effect from October 1, 2012 through September 30, 2014, should NOT be considered when calculating the Prior Adult Criminal Record.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to David Soule, Executive Director, Maryland State Commission on Criminal Sentencing Policy, 4511 Knox Road, Suite 309, College Park, MD 20742, or call 301-403-4165, or email to dsoule@umd.edu, or fax to 301-403-4164. Comments will be accepted through December 15, 2014. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2015

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

General

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

The proposed regulation amendments are routine activities that are covered under the regular budget.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

G. Small Business Worksheet:

Attached Document:

Title 14 INDEPENDENT AGENCIES

Subtitle 22 COMMISSION ON CRIMINAL SENTENCING POLICY

01 General Regulations

Authority: Criminal Procedure Article, §6-211, Annotated Code of Maryland

.03 Sentencing Guidelines Worksheet.

A. (text unchanged)

B. The sentencing guidelines and offense seriousness [category] *categories* in effect at *the time of* sentencing shall be used to calculate the [sentencing] guidelines. *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.*

C. – G. (text unchanged)

.08 Guidelines Scoring.

A. (text unchanged)

B. (text unchanged)

(1) *Seriousness Category of the Convicted Offense.*

(a) *Unless placed in a different category or specifically addressed by separate statute, the individual completing the worksheet shall consider a conspiracy, attempt, or solicitation in the same seriousness category as the substantive offense.*

(b) *Accessoryship.*

(i) *If the accessory after the fact has a penalty of 5 years or greater under Criminal Law Article, §1-301, Annotated Code of Maryland, a seriousness category V shall be assigned, unless the underlying offense has a seriousness category of less than V, in which case the accessory after the fact shall be assigned the same seriousness category as the underlying offense.*

(ii) *If the accessory after the fact has a penalty of less than 5 years under Criminal Law Article, §1-301, Annotated Code of Maryland, the seriousness category shall be the same category as the underlying offense.*

(c) *For conspiracy, attempt, solicitation, or accessoryship, the individual completing the worksheet shall specify the substantive illegal activity involved, and the substantive offense's Annotated Code of Maryland article and section number, if any.*

(d) *If a Maryland offense has not been assigned a seriousness category and the offense has a maximum penalty of 1 year or less, the offense shall be assigned the lowest seriousness category (VII).*

(e) *If a Maryland offense has not been assigned a seriousness category and the offense has a maximum penalty greater than 1 year, the individual completing the worksheet shall use the closest analogous offense and the sentencing judge and the parties shall be notified.*

.09 Offense Score.

A. (text unchanged)

B. (text unchanged)

(1) (text unchanged)

(2) (text unchanged)

(a) – (c) (text unchanged)

(d) (text unchanged)

(i) [The individual completing the worksheet shall consider accessory after the fact to be a Seriousness Category V offense if the offense has a maximum penalty of 5 years under Criminal Law Article, §1-301, Annotated Code of Maryland.] *If the accessory after the fact has a penalty of 5 years or greater under CR, §1-301, a seriousness*

category V shall be assigned, unless the underlying offense has a seriousness category of less than V, in which case the accessory after the fact shall be assigned the same seriousness category as the underlying offense.

[(ii) If the accessory after the fact has a penalty of greater than 5 years under a statute other than Criminal Law Article, §1-301, the seriousness category shall be one seriousness category below the seriousness category of the substantive offense.]

[(iii)] (ii) If the accessory after the fact has a penalty of less than 5 years *under CR, §1-301*, the seriousness category shall be the same category as the [substantive] *underlying* offense.

[iv. An accessory before the fact offense shall be one seriousness category below the substantive offense if there is a specific verdict as to accessoryship.]

(e) – (g) (text unchanged)

(3) – (5) (text unchanged)

C. (text unchanged)

.10 Computation of the Offender Score.

A. (text unchanged)

B. (text unchanged)

(1) – (2) (text unchanged)

(3) (text unchanged)

(a) (text unchanged)

(i) The prior adult criminal record includes all adjudications preceding the current sentencing event, whether the offense was committed before or after the instant one. Unless expunged from the record, or proven by the defense to have been eligible for expungement prior to the date of offense pursuant to Criminal Procedure Article, §§10-101—10-105, Annotated Code of Maryland, probations before judgment (PBJ) and convictions under the Federal Youth Corrections Act (FYCA) shall be included. The individual completing the worksheet may not consider violations of public local laws[.]; municipal infractions[.]; contempt[.]; criminal non-support[.]; marijuana possession or marijuana paraphernalia possession convictions that qualify for a non-incarceration penalty due to evidence of medical necessity[.]; *convictions for the use or possession of less than 10 grams of marijuana under Criminal Law Article, §5-601(c)(2)(ii), Annotated Code of Maryland, in effect from October 1, 2012 through September 30, 2014*; and non-incarcerable traffic offenses as part of a prior adult criminal record.

(ii) – (iii) (text unchanged)

(b) – (f) (text unchanged)

(g) (text unchanged)

(i) (text unchanged)

(ii) If accessory after the fact has a [maximum] penalty of 5 years *or greater* under Criminal Law Article, §1-301, Annotated Code of Maryland, [the individual completing the worksheet shall score it with] a seriousness category V *shall be assigned, unless the underlying offense has a seriousness category of less than V, in which case the accessory after the fact shall be assigned the same seriousness category as the underlying offense.*

[(iii) If accessory after the fact has a penalty of greater than 5 years under a statute other than Criminal Law Article, §1-301, Annotated Code of Maryland, the seriousness category shall be one seriousness category below the seriousness category of the substantive offense.]

[(iv)] (iii) If accessory after the fact has a penalty of less than 5 years *under Criminal Law Article, §1-301, Annotated Code of Maryland*, the seriousness category shall be the same category as the [substantive] *underlying* offense.

[(v) An accessory before the fact offense shall be one seriousness category below the substantive offense if there is a specific verdict as to accessoryship.]

(4) (text unchanged)

C. (text unchanged)