

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	02/13/2020	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 3/27/2020

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
14	22	01	02
14	22	01	08
14	22	01	10
14	22	02	01
14	22	02	02

3. Name of Promulgating Authority

Commission on Criminal Sentencing Policy

4. Name of Regulations Coordinator

David A Soule

Telephone Number

301-403-2707

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4511 Knox Road, Suite 309

City	State	Zip Code
College Park	MD	20742

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dsoule@crim.umd.edu

5. Name of Person to Call About this Document
Stacy Najaka

Telephone No.
301-403-2709

Email Address
snajaka@umd.edu

6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: February 11, 2020.

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 General Provisions Article, §3-302(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 #410-339-7339) on February 11, 2020. A written copy of the approval is on file at this agency.

Name of Authorized Officer

David Soule

Title
Executive Director

Telephone No.
301-403-2707

Date

February 12, 2020

**Title 14
INDEPENDENT AGENCIES**

Subtitle 22 COMMISSION ON CRIMINAL SENTENCING POLICY

14.22.01 General Regulations

Subtitle 22 COMMISSION ON CRIMINAL SENTENCING POLICY

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14.22.01 General Regulations

Subtitle 22 COMMISSION ON CRIMINAL SENTENCING POLICY

14.22.02 Criminal Offenses and Seriousness Categories

Subtitle 22 COMMISSION ON CRIMINAL SENTENCING POLICY

14.22.02 Criminal Offenses and Seriousness Categories

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 .02, .08, and .10 under COMAR 14.22.01 General Regulations and Regulations .01 and .02 under COMAR 14.22.02 Criminal Offenses and Seriousness Categories.

This action was considered by the MSCCSP at an open meeting held on December 10, 2019, notice of which was given by publication in the Maryland Register pursuant to State Government Article, § 10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to indicate modifications to the definition of adjudication in Regulation .02, the classification of conspiracy to commit a lawful act by unlawful means in Regulation .08, and the calculation of the prior adult criminal record in Regulation .10 under COMAR 14.22.01 General Regulations. These modifications clarify the instructions for scoring the prior adult criminal record component of the offender score, to indicate that certain military adjudications shall not be included. These modifications also classify conspiracy to commit a lawful act by unlawful means, to indicate that the seriousness category shall be the same seriousness category as most serious unlawful means. Additionally, the purpose of this action is to indicate modifications to the offense headings and the table of seriousness categories (guidelines offense table) in Regulations .01 and .02 under COMAR 14.22.02 Criminal Offenses and Seriousness Categories. The

proposed revisions reflect the classification of a previously unclassified offense, the addition of several common offenses with penalties of one year or less, and minor edits to the table.

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, University of Maryland, 4511 Knox Rd, 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 April 27, 2020. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2020

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:

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:

Title 14 INDEPENDENT AGENCIES

Subtitle 22 COMMISSION ON CRIMINAL SENTENCING POLICY

01 General Regulations

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

.02 Definitions.

- A. (text unchanged)
- B. Terms Defined.
 - (1) "Adjudication" includes a:
 - (a) – (b) (text unchanged)
 - (c) Plea of nolo contendere (no contest) by the offender; [or]
 - (d) Sentence to probation before judgment (PBJ)[.]; or
 - (e) *Finding of guilt by a general or special court-martial, if the elements of the offense constitute an offense under Maryland law and do not require the defendant's service in a military force.*
 - (1-1) – (22) (text unchanged)

.08 Guidelines Scoring.

- A. – B. (text unchanged)
- C. Seriousness Category of the Convicted Offense.
 - (1) (text unchanged)
 - (2) *For conspiracy to commit a lawful act by unlawful means, the seriousness category and offense type classification should be the same as the most serious unlawful means by which the lawful act was to be accomplished. If there is a question as to the seriousness category or offense type classification for the conspiracy to commit a lawful act by unlawful means, that question should be brought to the attention of the judge at sentencing.*
 - [(2)](3) Accessoryship.
 - (a) – (b) (text unchanged)
 - [(3)](4) 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.
 - [(4)](5) 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).
 - [(5)](6) 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.

.10 Computation of the Offender Score.

- A. (text unchanged)
- B. Four Components of the Offender Score.
 - (1) – (2) (text unchanged)
 - (3) Prior Adult Criminal Record.
 - (a) In General.
 - (i) Except as noted in this paragraph, 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: 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; violations of public local laws; municipal infractions; contempt; criminal nonsupport; marijuana possession or marijuana paraphernalia possession adjudications that qualify for a non-incarceration penalty due to evidence of medical necessity; adjudications based on acts that are no longer crimes; non-incarcerable traffic offenses; *military adjudications imposed by an Article 15 proceeding or summary court-martial; findings of guilt by*

general or special courts-martial, if the elements of the offense require the defendant's service in a military force, including but not limited to desertion, absence without leave (AWOL), and conduct unbecoming an officer and a gentleman, or do not constitute an offense under Maryland law; or more than one adjudication arising from a single criminal event.

(ii) – (iii) (text unchanged)

(b) – (c) (text unchanged)

(d) Convictions Out of Jurisdiction. If an offender has been convicted in another jurisdiction, *excluding military adjudications (see COMAR 14.22.01.10.B.3.(e) for instructions for scoring military adjudications)*, the individual completing the worksheet shall match the offense as closely as possible to the closest analogous Maryland offense. If no Maryland analogous offense exists, the individual completing the worksheet shall count the offense in the lowest seriousness category (VII), and shall inform the judge and parties. 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.

(e) *Military Adjudications. If an offender has a finding of guilt by a general or special court-martial, the military adjudication shall be matched as closely as possible to the closest analogous Maryland offense. If a military adjudication has no equivalent in Maryland law or requires as an element of the offense the defendant's service in a military force, including but not limited to desertion, absence without leave (AWOL), and conduct unbecoming an officer and a gentleman, the offense shall be excluded from the adult prior criminal record. If there is a question as to the analogous guidelines offense for a military adjudication, that question should be brought to the attention of the judge at sentencing.*

[(e)](f) Theft-Type Offenses. Theft convictions, such as larceny, larceny by trick, or larceny after trust, that took place before the enactment of the comprehensive theft statute in 1978 are considered misdemeanor theft if they were misdemeanors and felony theft if they were felonies.

[(f)](g) Criminal Record Decay Factor. If an offender has lived in the community for at least 10 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.

[(g)](h) Conspiracies, Attempts, Solicitations, and Accessoryships.

(i) – (iii) (text unchanged)

(4) (text unchanged)

C. (text unchanged)

02 Criminal Offenses and Seriousness Categories

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

.01 List of Offense Headings.

A—B (text unchanged)

C

CDS and Paraphernalia, Crimes

CDS—Registration

Cemeteries and Funerary Objects, Crimes Involving

Commercial Fraud, Other

Conspiracy

Consumer Protection Laws

Counterfeiting

Credit Card Crimes

Crimes Against the Person, Generally

Criminal Gang Offenses

D—P (text unchanged)

Perjury

Prescription Drugs and Other Substances

Pretrial Release, Crimes Involving

Prostitution and Related Crimes

Public Fraud

Public Health and Safety, Crimes Against

R—W (text unchanged)

.02 Seriousness Categories.

	Offense Literal	CJIS Code	Source	Felony or Misd.	Max Term	Min Term	Offense Type	Ser. Category	Fine
1—5 (text unchanged)									
5-1	Abuse and Other Offensive Conduct <i>Confine unattended child</i>	1-0005	<i>FL, §5-801</i>	<i>Misd.</i>	<i>30D</i>		<i>Person</i>	<i>VII</i>	<i>\$500</i>
6—51 (text unchanged)									
52	CDS and Paraphernalia Unlawful distribution, manufacture, etc.; counterfeiting, etc., manufacture, possession, etc., of certain equipment for illegal use; keeping common nuisance, narcotics and hallucinogenics (e.g., PCP, heroin, cocaine, LSD, oxycodone, <i>fentanyl</i> , and methadone)	1-1118 1-1119 1-1120 1-1121 1-1122 1-1123 1-1124 1-1125 1-1126 1-1127 1-1128 1-1129 1-1131 1-1132 1-1133 1-1556 1-1557 1-1558	CR, §5-608(a) CR, §5-609(a)	Felony	20Y		Drug	IIIB	\$15,000

53	CDS and Paraphernalia Unlawful distribution, manufacture, etc.; counterfeiting, etc., manufacture, possession, etc., of certain equipment for illegal use; keeping common nuisance, narcotics and hallucinogenics (e.g., PCP, heroin, cocaine, LSD, oxycodone, <i>fentanyl</i> , and methadone), subsequent		CR, §5-608(b) CR, §5-609(b) CR, §5-608(c) CR, §5-609(c) CR, §5-608(d) CR, §5-609(d)	Felony	20Y 25Y 40Y		Drug	IIIB	\$15,000 0 \$25,000 0 \$25,000 0
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53-1—98-4 (text unchanged)

99 [Vacant]	Conspiracy <i>Conspiracy to commit a lawful act by unlawful means</i>		<i>Common Law</i>	<i>Misd.</i>	<i>LIFE</i>		<i>Person Drug Property</i>	<i>Same seriousness category as most serious unlawful means</i>	
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100—208 (text unchanged)

209	[Influencing or Intimidating Judicial Process Failure to appear in connection with a felony] Identity Fraud <i>Possess/use false government ID; display government ID of another</i>	[1-1474] 1-1432 1-1433	[CP, §5-211(c)(1)] CR, §8-303	Misd.	[5Y] 6M		[Person] Property	[V] VII	[\$5,000] \$500
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209 - 1 <i>Vacant</i>	[Influencing or Intimidating Judicial Process] Failure to appear in connection with a misdemeanor or for appearance as witness]	[1-1475]	[CP, §5-211(c)(2)]	[Misc.]	[1Y]		[Person]	[VII]	[\$1,000]
210—275 (text unchanged)									
276	Murder 1 st degree [generally]	1-0990	CR, §2-201	Felony	LIFE ♦	LIFE	Person	I	
277 <i>Vacant</i>	[Murder 1 st degree during rape, etc.]	[1-0990]	[CR, §2-201]	[Felony]	[LIFE ♦]	[LIFE]	[Person]	[I]	
278 <i>Vacant</i>	[Murder 1 st degree perpetration of arson]	[1-0990]	[CR, §2-201]	[Felony]	[LIFE ♦]	[LIFE]	[Person]	[I]	
279 <i>Vacant</i>	[Murder 1 st degree burning barn, tobacco house, etc.]	[1-0990]	[CR, §2-201]	[Felony]	[LIFE ♦]	[LIFE]	[Person]	[I]	
280—307 (text unchanged)									
307-1	Pretrial Release, Crimes Involving <i>Failure to appear in connection with a felony</i>	1-1474	CP, §5-211(c)(1)	Misd.	5Y		Person	V	\$5,000
307-2	Pretrial Release, Crimes Involving <i>Failure to appear in connection with a misdemeanor or for appearance as witness</i>	1-1475	CP, §5-211(c)(2)	Misd.	1Y		Person	VII	\$1,000
308 [Vacant]	Pretrial Release, Crimes Involving <i>Violate release conditions while charged with committing a sexual crime against a minor, a crime of violence, a crime against a person eligible for relief, or stalking</i>	1-0636 1-1464 1-1465 1-1732	CP, §5-213.1	Misd.	90D		Person	VII	
308-1—420 (text unchanged)									

Footnotes (text unchanged)

General Rules: (text unchanged)