

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Independent Agencies**
(DLS Control No. 20-087)

Overview and Legal and Fiscal Impact

These regulations update the criminal offenses and seriousness categories table in large part to reflect changes made to Maryland law during the 2019 and 2020 legislative sessions.

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:

Criminal Offenses and Seriousness Categories: COMAR 14.22.02.01

Criminal Offenses and Seriousness Categories: COMAR 14.22.02.02

Legal Analysis

Background

The Judiciary introduced the concept of judicial sentencing guidelines in Maryland in the late 1970s. The Court of Appeals formed the Committee on Sentencing in May 1978 to review recent developments in sentencing in the United States, study the major proposals for reform, and consider sentencing practices in Maryland. The sentencing guidelines were developed, in part, based on the analysis of historical sentencing practices in Maryland. Due to limitations from missing data, the guidelines were also informed by the analysis of survey responses from trial judges on hypothetical cases and from policy input from other criminal justice actors (e.g., prosecutors, defense attorneys, parole board, etc.). The sentencing guidelines account for both offense and offender characteristics in determining the appropriate sentencing range. Beginning in June 1981, four jurisdictions piloted the sentencing guidelines. At the conclusion of the pilot period in May 1982, the Judicial Conference decided to continue using sentencing guidelines in those jurisdictions for an additional year, given the initial success of the guidelines. After two years of experience with sentencing guidelines in Maryland on a test basis, in 1983 the Judicial Conference voted favorably on (and the Maryland General Assembly approved) the guidelines, adopting them formally statewide.

The General Assembly established the Maryland State Commission on Criminal Sentencing Policy in 1999 as an independent agency to support fair and proportional sentencing policy and to monitor the State’s voluntary sentencing guidelines for criminal cases sentenced in the circuit courts. The commission is responsible for collecting and automating the sentencing guidelines worksheets, maintaining the sentencing guidelines database, monitoring circuit court sentencing practice, adopting changes to the guidelines consistent with the sentencing practices of Maryland circuit court judges, and providing training and orientation to criminal justice practitioners who apply the sentencing guidelines.

Summary of Regulations

These regulations update and reorganize the criminal offenses and seriousness categories table in part to reflect changes to Maryland law made by the following:

- Chapters 28 and 29 of 2019, which established certain religiously motivated hate crimes;
- Chapters 21 and 22 of 2020, which established the use of an item or a symbol (e.g. a noose or swastika) to threaten or intimidate as a hate crime;
- Chapter 45 of 2020, which repealed sodomy as a crime;
- Chapter 93 of 2020, which prohibited certain interference with an equine;
- Chapters 128 and 129 of 2020, which established increased penalties for the second and subsequent sexual solicitation of a minor;
- Chapter 164 of 2020, which increased penalties for bribery of or by a public employee;
- Chapters 367 and 368 of 2020, which added a level of intent requirement to hate crimes prohibitions;
- Chapters 385 and 386 of 2020, which prohibited practicing dentistry without a license;
- Chapter 422 of 2020, which repealed the term criminal “gangs” and replaced it with criminal “organizations”; and
- Chapters 612 and 613 of 2020, which reorganized and updated a number of provisions related to medical oversight boards in the Health – Occupations Article as well as penalties for practicing those health occupations without a license including:
 - Respiratory care;
 - Radiation therapy, nuclear medicine technology, radiography, or radiology assistance;

- Polysomnography;
- Athletic training;
- Perfusion; and
- Naturopathic medicine.

The commission informs the Department of Legislative Services that, due to space considerations, many offenses with a maximum penalty of one year or less are not listed in the table, though some are added by these regulations to provide consistency with similar provisions. The regulations also reorganize existing provisions, separate provisions that were previously combined, and make certain other general, nonsubstantive changes such as removing “Other” from the heading for certain offenses.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The commission cites § 6-211 of the Criminal Procedure Article as statutory authority for the regulations. More specifically, § 6-211(a) requires the commission to adopt as regulations sentencing guidelines and any changes to those sentencing guidelines. Section 6-211(b) provides that the regulations adopted by the commission are voluntary guidelines that a court is not required to follow.

The relevant cited 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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