

## MARYLAND REGISTER

# Proposed Action on Regulations

Transmittal Sheet	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
PROPOSED OR REPROPOSED	12/11/2017	Date Filed with Division of State Documents
Actions on Regulations		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 1/5/2018

2. COMAR Codification

**Title Subtitle Chapter Regulation**

12 13 03 01 - .07

3. Name of Promulgating Authority

Department of Public Safety and Correctional Services

4. Name of Regulations Coordinator      Telephone Number  
Elizabeth J Bartholomew      410-585-3604

Mailing Address

6776 Reisterstown Road, Suite 205

**City      State      Zip Code**  
Baltimore      MD      21215

**Email**  
ebartholomew@dpscs.state.md.us

5. Name of Person to Call About this Document      Telephone No.  
Eleanor McMullen, JD      410-585-3568

**Email Address**  
eleanor.mcmullen@maryland.gov

6. Check applicable items:  
 New Regulations  
 Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: .

- 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 Susan Howe Baron, Assistant Attorney General, (telephone #410-339-5366) on 12/8/2017. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Stephen T. Moyer

**Title**

Secretary

**Telephone No.**

410-339-5000

**Date**

12/8/2017

**Title 12**

**DEPARTMENT OF PUBLIC SAFETY AND  
CORRECTIONAL SERVICES**

**Subtitle 13 DIVISION OF PAROLE AND PROBATION**

**12.13.03 Earned Compliance Credits**

Authority: Correctional Services Article, §§2-109, 6-101 and 6-117

## **Notice of Proposed Action**

[ ]

The Secretary of Public Safety and Correctional Services proposes to , in cooperation with the Director of Parole and Probation proposes new regulations .01 — .07 under new COMAR 12.13.03 — Earned Compliance Credits.

### **Statement of Purpose**

The purpose of this action is to establish regulations in line with the recent enactment of the Maryland Justice Re-Investment Act. The proposed regulations establish guidelines for: verifying that an individual under the supervision of the Division of Parole and Probation is eligible to receive Earned Compliance Credits; automating the award of Earned Compliance Credits to a supervised individual; denying a supervised individual Earned Compliance Credits based on noncompliance with the conditions of supervision; and the abatement and rescission of abatement for a supervised individual.

### **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 Joseph Clocker, Director , Division of Parole and Probation, 6776 Reisterstown Road, or call 410-585-3500, or email to , or fax to 410-764-4293. Comments will be accepted through 2/5/2018. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2018

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 Funds

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: This action creates Department COMAR to reflect existing practice in the award and denial of Earned Compliance Credits to supervised individuals. No additional funding is necessary to implement or maintain the proposed action.

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

These regulations affect the Department of Public Safety and Correctional Services only.

G. Small Business Worksheet:

Attached Document:

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## **Title 12 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES**

### **Subtitle 13 DIVISION OF PAROLE AND PROBATION**

#### ***Chapter 03 Earned Compliance Credits***

*Authority: Correctional Services Article, §§2-109, 6-101, and 6-117*

##### ***.01 Scope.***

*A. Except under § B of this regulation, these regulations apply to individuals supervised by the Division of Parole and Probation on probation, parole, or mandatory supervision release.*

*B. These regulations do not apply to an individual who is not a supervised individual.*

##### ***.02 Definitions.***

*A. In this chapter, the following terms have the meanings indicated.*

###### *B. Terms Defined.*

*(1) "Abatement" has the meaning stated in Correctional Services Article, § 6-117, Annotated Code of Maryland.*

*(2) "Department" means the Department of Public Safety and Correctional Services.*

*(3) "Director" means the director of the Division of Parole and Probation.*

*(4) "Division" means the Division of Parole and Probation.*

*(5) "Earned compliance credit (ECC)" has the meaning stated in Correctional Services Article, § 6-117, Annotated Code of Maryland.*

*(6) "Infraction" means an act or behavior committed by a supervised individual that is not in compliance with the supervised individual's general or special conditions of supervised release.*

*(7) "Intervention" means a response to an infraction that does not require a Parole and Probation Agent or Drinking Driver Monitor to report the infraction to the sentencing court or Maryland Parole Commission.*

*(8) "Monitor" has the meaning stated in COMAR 12.10.01.01.*

*(9) "Noncompliant" means a supervised individual who has received:*

*(a) A sanction for a technical violation; or*

*(b) An intervention for an infraction.*

(10) "Offender Case Management System (OCMS)" means the Department's records management application and database.

(11) "Parole and Probation Agent (agent)" has the meaning stated in COMAR 12.10.01.01.

(12) "Supervised individual" has the meaning stated in Correctional Services Article, § 6-117, Annotated Code of Maryland.

(13) "Technical Violation" has the meaning stated in Correctional Services Article, § 6-101, Annotated Code of Maryland.

(14) "Sanction" means a response to a technical violation that does require a Parole and Probation Agent or Drinking Driver Monitor to report the technical violation to the sentencing court of Maryland Parole Commission.

(15) "Supervised release" includes the following or a combination of the following:

- (a) Parole;
- (b) Mandatory supervision release; and
- (c) Probation.

**.03 Eligibility to Accrue Earned Compliance Credits.**

A. Eligibility is a threshold determination which means that a supervised individual is permitted by law to receive ECC.

B. Eligibility to earn ECC is not a guarantee that a supervised individual will receive ECC.

C. Automated Eligibility Determination.

- (1) The Department shall automate eligibility for ECC.
- (2) Unless an individual is determined to be ineligible under §D of this regulation, ECC shall be automatically awarded.

D. Review of Eligibility Determination.

- (1) If an agent or monitor has reason to question the automated eligibility determination that an individual under the supervision of the Division is eligible or ineligible to earn ECC, the agent or monitor shall:
  - (a) Document the concern in writing;
  - (b) Manually verify the individual's eligibility; and
  - (c) Consult with a supervisor.
- (2) If an individual under the supervision of the Division has reason to question the automated eligibility determination, the individual may provide documentation supporting eligibility to the agent or monitor to be evaluated under § D(1) of this regulation.
- (3) A supervisor who is provided information by an agent or monitor under §§ D(1) or (2) of this regulation shall review the material and consult with the appropriate authority to determine whether the affected individual has been improperly categorized in OCMS as eligible or ineligible for ECC.
- (4) A supervisor, upon determining that an individual under the supervision of the Division is ineligible to earn ECC, shall:
  - (a) Document the findings and reason for ineligibility; and
  - (b) Notify the individual in writing of:
    - (i) Determination of ineligibility to earn ECC; and
    - (ii) Reason or reasons for the determination of ineligibility.
- (5) A supervisor, upon determining that an individual under the supervision of the Division is eligible to earn ECC, shall:
  - (a) Document the findings and reason for eligibility; and
  - (b) Notify the supervised individual in writing of:
    - (i) Determination of eligibility to earn ECC; and
    - (ii) Reason or reasons for the determination of eligibility.

E. If the supervised individual participates in a problem solving court established under Md. Rule 16-207, an agent or monitor in conjunction with the Court shall determine if the supervised individual's enrollment requires the supervised individual to waive abatement as described in Regulation .06D of this chapter.

**.04 Award of Earned Compliance Credits.**

A. Automated Award of ECC.

- (1) If a supervised individual is compliant with all of the conditions of supervised release during a calendar month, the Division shall automatically award ECC resulting in:
  - (a) A reduction of the period of the supervised individual's supervised release by 20 days; and
  - (b) An update of the supervised individual's projected abatement eligibility date.
- (2) The Division may not award partial ECC or prorate the accrual of ECC based on the number of days a supervised individual is under supervised release in a calendar month.

B. An agent or monitor shall notify the:

- (1) Supervised individual once every 3 months, during the period of supervised release, of the supervised individual's projected abatement eligibility date; and
- (2) Sentencing court, Parole Commission, or both, as applicable, at least 90 calendar days before a supervised individual's abatement date is reached, of the supervised individual's projected abatement date.

C. A supervisor shall retract a supervised individual's ECC if the ECC have been awarded erroneously.

**.05 Denial of Earned Compliance Credits.**

A. An agent or monitor shall disqualify a supervised individual from receiving the monthly ECC if, during that month, the supervised individual:

- (1) Was noncompliant with a condition of supervision;
- (2) Was arrested, summoned, or indicted on a statement of charges;
- (3) Committed a violation of a criminal prohibition other than a minor traffic offense;
- (4) Committed a violation of a no contact or stay-away order; or
- (5) Absconded from supervision.

B. If a supervised individual is denied ECC during a calendar month, the agent or monitor shall:

- (1) Document the type of noncompliance committed;
- (2) Document the denial of ECC during the calendar month;
- (3) Notify the supervised individual in writing of the failure to earn ECC; and
- (4) Encourage the supervised individual to comply with the terms and conditions of supervision release.

C. The agent or monitor shall retroactively award the denied ECC to the supervised individual if the sentencing court or the Parole Commission finds that the supervised individual was in compliance for an alleged act of noncompliance that led to a denial of ECC under §§ A. and B. of this regulation.

D. If an agent or monitor's denial of ECC is based on a failure of the supervised individual to make payment on a court-ordered financial obligation for a period exceeding 60 days, the supervised individual shall be retroactively awarded the denied ECC if:

- (1) The supervised individual satisfies the payment obligation within 60 days; or
- (2) The Court waives the supervised individual's payment obligation.

**.06 Abatement.**

A. The Division shall place a supervised individual on abatement if the supervised individual:

- (1) Is not pending trial for a new criminal charge or technical violation;
- (2) Has satisfied the term of active supervised release; and
- (3) Reached the supervised individual's abatement eligibility date.

B. The Division shall not charge a supervision fee or program fee to a supervised individual whose supervised release has been abated.

C. A supervised individual whose supervised release is abated shall:

- (1) Obey all laws;
- (2) Obtain written permission from the Division before relocating residence outside of the State; and
- (3) If applicable, continue to make payments on outstanding court-ordered restitution and any associated fees.

D. Except as set forth in Regulation .07 of this chapter, a supervised individual whose active supervision term is abated shall remain on abated supervision status until the legal expiration date of the supervised individual's probation, parole, or mandatory supervision release term is reached.

E. Consent to Continue Active Supervision. A supervised individual whose supervision is eligible for abatement may consent to continue active supervision until the legal expiration date of the supervised individual's probation, parole, or mandatory supervision release term is reached.

**.07 Abatement Rescission.**

A. An agent or monitor shall inform the sentencing court, Parole Commission, or both, as applicable, if a supervised individual whose active supervision is abated violates a condition of the supervised individual's probation or release order.

B. If a court or the Parole Commission finds that a supervised individual whose active supervision is abated has violated a condition of probation, parole, or mandatory supervision release, as applicable, the court or Parole Commission may rescind the supervised individual's abatement and order the supervised individual to be returned to active supervision.