

**Department of Legislative Services**  
Maryland General Assembly  
2018 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 938

(Senator Kelley)

Judicial Proceedings

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**Criminal Procedure – Sentencing Guidelines – Previously Adjudicated  
Delinquent**

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This bill repeals the requirement that the sentencing guidelines adopted by the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) set forth a range of increased severity for defendants previously adjudicated delinquent.

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**Fiscal Summary**

**State Effect:** Revision of the State’s sentencing guidelines can be implemented with existing budgeted resources. However, depending on judicial discretion, the bill may impact State incarceration expenditures, as discussed below. Revenues are not affected.

**Local Effect:** Depending on judicial discretion, the bill may impact local incarceration expenditures. Revenues are not affected.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** MSCCSP is required to develop sentencing guidelines and is authorized to change those guidelines. The guidelines must include sentencing guidelines for ordinary sentences and sentencing guidelines for corrections options (correctional programs). The sentencing guidelines for ordinary sentences must call for sentences within the limits set by law and must set forth (1) the range of sentences for crimes of a given degree of seriousness; (2) a range of increased severity for defendants previously convicted of or adjudicated delinquent for a previous crime; and (3) a list of aggravating and mitigating circumstances.

**Background:** The General Assembly created MSCCSP in 1999, after a study commission recommended the creation of a permanent commission in its final report to the General Assembly. MSCCSP consists of 19 members, including members of the Judiciary, members who are active in the Maryland criminal justice system, members of the General Assembly, and public representatives.

The MSCCSP was created to oversee sentencing policy in Maryland and is primarily responsible for maintaining and monitoring the State's voluntary sentencing guidelines, which are intended to promote fair and proportional sentencing while eliminating sentencing disparity.

MSCCSP is authorized to adopt sentencing guidelines to be considered by courts when determining the appropriate sentence for a criminal defendant, as well as the collection and automation of sentencing guidelines data. All sentencing guidelines data are provided on the sentencing guidelines worksheet, which is completed to determine the recommended sentencing guidelines outcome and to record sentencing data for offenses prosecuted in circuit court. The commission's staff use the collected data to analyze sentencing trends, monitor circuit court sentencing compliance, and adopt changes to the guidelines consistent with legislative intent when necessary.

After receiving public comments in 2012 raising concerns about the definition of commitment in the offender score calculations and geographical disparities in scoring the juvenile delinquency component of the offender score, MSCCSP worked with the Maryland Data Analysis Center (MDAC) to examine the juvenile delinquency score in the State's sentencing guidelines. According to MSCCSP, MDAC's analysis determined or indicated that (1) the effect of the juvenile score on the sentencing outcome varied by jurisdiction and by the juvenile's race; (2) variations in the interpretation of the juvenile delinquency score exist among practitioners and jurisdictions; and (3) an association exists between the number of juvenile adjudications and increased risk of recidivism.

At its July 2017 meeting, the commission decided to use the following principles to direct its decision on revision of the juvenile delinquency score: (1) whether the guidelines should continue to consider a juvenile record for purposes of calculating the offender score; (2) if the juvenile record continues to be considered, whether instructions for the guidelines should be revised; (3) whether the five-year lookback on juvenile records should be officially adopted; and (4) whether an alternative scoring system should be adopted.

In September 2017, MSCCSP voted to (1) revise the instructions for the juvenile delinquency score in the sentencing guidelines manual and State regulations; (2) adopt a five-year lookback window by clarifying that a delinquent act may only be included in the juvenile delinquency score if the delinquent act occurred within five years before the date

of the offense; and (3) adopt an alternative juvenile scoring system. The new system will take effect on July 1, 2018.

MSCCSP reviewed several scoring systems and considered the following three factors before making its decision: (1) the ability of the scoring system to predict adult recidivism; (2) the scoring system’s ability to identify distinct risk categories for adult recidivism; and (3) potential disparities under the system. **Exhibit 1** contains a summary of the current and newly adopted juvenile scoring systems.

**Exhibit 1**  
**Comparison of Current Juvenile Scoring System and the Newly Adopted Juvenile Scoring System**

Juvenile Score	Current Criteria for Juvenile Score	Newly Adopted Criteria for Juvenile Score
0	<ul style="list-style-type: none"> <li>● 23 years or older by the date of the offense; OR</li> <li>● crime free for 5 years since the last finding of a delinquent act or last adjudication; OR</li> <li>● no more than 1 finding of a delinquent act</li> </ul>	<ul style="list-style-type: none"> <li>● 23 years or older by the date of the offense; OR</li> <li>● 0 findings of a delinquent act within 5 years of the date of the most instant offense</li> </ul>
1	<ul style="list-style-type: none"> <li>● Younger than 23 years; AND</li> <li>● 2 or more findings of a delinquent act or 1 commitment</li> </ul>	<ul style="list-style-type: none"> <li>● Younger than 23 years; AND</li> <li>● 1 or 2 findings of a delinquent act within 5 years of the date of the most instant offense</li> </ul>
2	<ul style="list-style-type: none"> <li>● Younger than 23 years; AND</li> <li>● 2 or more commitments</li> </ul>	<ul style="list-style-type: none"> <li>● Younger than 23 years; AND</li> <li>● 3 or more findings of a delinquent act within 5 years of the date of the most instant offense</li> </ul>

Source: Maryland State Commission on Criminal Sentencing Policy

According to the Robina Institute of Criminal Law and Criminal Justice’s *Criminal History Enhancements Sourcebook*, 17 of the 18 states that have adopted sentencing guidelines include juvenile delinquency in the calculation of the offender score.

**State/Local Expenditures:** While the State’s sentencing guidelines can be revised with existing budgeted resources, the bill’s provisions may alter sentences in circuit court criminal cases, potentially impacting State/local incarceration expenditures. The net effect of any changes in sentencing practices resulting from the bill is dependent on judicial discretion and cannot be reliably determined without actual experience under the bill.

The sentencing guidelines are voluntary. However, MSCCSP advises that it received sentencing worksheets for 89% of guidelines-eligible cases in fiscal 2017. An estimated 81% of the sentences in these cases complied with the guidelines. Removal of the juvenile delinquency score from the guidelines does not prohibit a judge from considering a defendant’s juvenile record for sentencing purposes. As a result, judges may (1) place more or less weight on a defendant’s juvenile record than prescribed under the newly adopted guidelines; (2) factor components of a juvenile record not included in the new scoring system (*e.g.*, a finding of a delinquent act that was made more than five years from the date of the offense or a disposition other than a finding of a delinquent act); or (3) maintain the status quo.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 122 (Delegate Anderson, *et al.*) - Judiciary.

**Information Source(s):** Anne Arundel, Dorchester, and Garrett counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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