

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 412 (The Speaker, *et al.*) (By Request - Administration)
 Judiciary

State Commission on Criminal Sentencing Policy – Plea Agreements and Annual Report (The Judicial Transparency Act of 2022)

This emergency Administration bill establishes that a sentence imposed under a plea agreement may not be considered to be compliant with the sentencing guidelines unless the sentence falls within the actual sentencing guidelines range. The bill also expands the reporting requirements of the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) by requiring MSCCSP to provide in its annual report additional information for cases involving a “crime of violence” under § 14-101 of the Criminal Law Article. MSCCSP must include appropriate entry locations on a sentencing guidelines worksheet for a court to report this information.

Fiscal Summary

State Effect: General fund expenditures increase by \$33,000 in FY 2022. Future years reflect annualization, inflation, and ongoing expenditures. Otherwise, the bill is not anticipated to materially affect State operations or finances, as discussed below.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	33,000	93,700	97,500	100,300	102,900
Net Effect	(\$33,000)	(\$93,700)	(\$97,500)	(\$100,300)	(\$102,900)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local government operations or finances, as discussed below.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary: MSCCSP must include the following information in its annual report for each case involving a crime of violence:

- the crime of which the defendant was convicted;
- the sentence imposed;
- the applicable sentencing guidelines range;
- the disposition of the case, as indicated on the sentencing guidelines worksheet;
- for convictions in which a portion of the sentence is suspended, the amount of time suspended and the percentage of the sentence suspended;
- for sentencing events that departed from the guidelines, the reasons for departure cited;
- the court and judicial circuit with jurisdiction over the case; and
- the sentencing judge.

Current Law/Background: The surge in violent crime in Baltimore City has been the subject of extensive discussion and media coverage in recent years. Since 2015, there have been more than 300 homicides each year in Baltimore City. In January 2022, there were 36 homicides in Baltimore City, making it the deadliest January in the city in approximately 50 years. This bill is part of the Governor's legislative package to address violent crime.

Maryland State Commission on Criminal Sentencing Policy – Data Collection and Guidelines Compliance

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. The guidelines apply to most circuit court cases.

MSCCSP is responsible for the adoption of 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. The sentencing guidelines are advisory, and judges may, at their discretion, impose a sentence outside the guidelines. However, judges are asked to document the reasons for sentencing outside of the guidelines.

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. After a sentencing judge or the judge's designee completes the worksheet, the judge reviews the worksheet for

completeness and accuracy and submits a copy of the worksheet to MSCCSP. The commission's staff use data collected from these worksheets to analyze sentencing trends, monitor circuit court sentencing compliance, and adopt changes to the guidelines consistent with legislative intent when necessary.

MSCCSP deems a sentence compliant with the guidelines if the initial sentence (defined as the sum of incarceration, credited time, and home detention) falls within the applicable guidelines range. A sentence is also compliant if the judge sentenced an offender to a period of pre-sentence incarceration time with no additional post-sentence incarceration time and the length of credited pre-sentence incarceration exceeds the upper guidelines range for the sentencing event. A sentence to be served in a corrections options program (*e.g.*, participation in a problem-solving court, commitment to substance abuse treatment under § 8-507 of the Health General Article, home detention, and work release) is compliant if the initial sentence combined with any suspended sentence falls within or above the applicable guidelines range and the sentencing event does not include a crime of violence, child sexual abuse, or escape.

Finally, sentences imposed pursuant to an MSCCSP binding plea agreement (formerly referred to as an American Bar Association binding plea agreement) are guidelines-compliant. The sentencing guidelines manual defines an MSCCSP binding plea agreement as follows: "A plea agreement presented to the court in agreement by an attorney for the government and the defendant's attorney, or the defendant when proceeding *pro se*, that a court has approved relating to a particular sentence and disposition. An MSCCSP binding plea agreement means an agreement to a specific amount of active time (if any), not merely a sentence cap or range. The court has the discretion to accept or reject the plea. The agreement is binding on the court under Maryland Rule 4-243(c) if the court accepts the plea." The corrections options and MSCCSP binding plea agreement compliance policies allow the court to impose a sentence that is compliant with the guidelines while considering the individual needs of the offender, such as substance abuse treatment, as opposed to incarceration.

According to MSCCSP's *2021 Annual Report*, during fiscal 2021, 42.2% of sentencing events were resolved by a binding plea agreement; 37.7% were resolved by another type of plea agreement. Overall, 81% of sentencing events during fiscal 2021 were guidelines-compliant, 15.6% were below the guidelines, and 3.4% were above the guidelines.

Maryland State Commission on Criminal Sentencing Policy – Annual Report

MSCCSP is required to conduct an annual review of sentencing policy and practice and submit a report to the General Assembly by January 31 of each year. The report must (1) include any changes to the sentencing guidelines made during the preceding year;

(2) review judicial compliance with the sentencing guidelines, including compliance by crime and by judicial circuit; (3) review reductions or increases in original sentences that have occurred because of reconsiderations of mandatory sentences for crimes of violence; and (4) categorize information on these reconsiderations of sentences by offense and by judicial circuit.

Crime of Violence

Section 14-101(a) of the Criminal Law Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) felony sex trafficking and forced marriage; (17) an attempt to commit crimes (1) through (16); (18) continuing course of certain sexual conduct with a child; (19) assault in the first degree; and (20) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

MSCCSP advises that based on a review of the Maryland Sentencing Guidelines Database, the commission received information for 2,756 counts and 1,788 individuals sentenced for a crime of violence under § 14-101 of the Criminal Law Article in the State’s circuit courts during fiscal 2019 (the most recent fiscal year not affected by the COVID-19 pandemic).

State/Local Expenditures: MSCCSP advises that given current staff workloads, an additional full-time employee is needed for the commission to meet the projected additional workload under the bill. The additional responsibilities include data collection, data management, and data analysis for approximately 2,700 crime of violence convictions each year; communicating with the courts and other stakeholders to verify information; updating materials; and assisting with training needs. Accordingly, general fund expenditures increase by \$33,008 in fiscal 2022, which reflects the bill’s emergency status and accounts for sufficient time to hire staff (with an assumed start date of June 1, 2022). This estimate reflects the cost of hiring one research analyst to assist MSCCSP with the expanded data collection and data analysis required under the bill and one-time computer programming costs for MSCCSP to alter the Maryland Automated Guidelines System to revise the calculation of sentencing guidelines compliance and allow for the reporting of judicial information as required under the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$7,625
Computer Programming	18,750
Operating Expenses	<u>6,633</u>
Total FY 2022 State Expenditures	\$33,008

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Resolution of Cases Through Plea Agreements

As noted above, the sentencing guidelines (which apply to most circuit court cases) are *voluntary*. Thus, the bill’s impact on the operations of the circuit courts and affiliated entities depends on the bill’s overall effect on case resolution via plea agreement. *If* the bill results in fewer plea agreements that are not within the sentencing guidelines range being negotiated and accepted by judges, more cases *may* go to trial, thereby resulting in additional court time for adjudication of criminal cases. However, this analysis assumes that because the use of the sentencing guidelines continues to be voluntary, the extent of any potential impact, including that associated with more trials and imposed sentences to comply with the guidelines, that is *solely* attributable to this bill does not materially affect the operations or finances of the Judiciary, State’s Attorneys’ Offices, or the Office of the Public Defender and does not materially affect incarceration costs.

Additional Comments: MSCCSP advises that it is unlikely to receive the additional information needed for the annual report until fiscal 2023. Therefore, MSCCSP anticipates that the new information required by the bill will first be included in the fiscal 2023 sentencing information discussed in the annual report due by January 31, 2024.

Additional Information

Prior Introductions: The bill reflects a combination of similar bills that have been introduced during previous legislative sessions. HB 1458 of 2020, which contained similar plea agreement provisions, received a hearing in the House Judiciary Committee, but no further action was taken. With respect to the reporting requirements, HB 355 of 2020, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 272, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. SB 176 of 2019 passed the Senate with amendments and was referred to the House Rules and Executive Nominations Committee, but no further action was taken. Its cross file, HB 229, received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: SB 392 (The President, *et al.*) (By Request - Administration) - Judicial Proceedings.

Information Source(s): Charles, Frederick, Montgomery, and Somerset 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; *Baltimore Sun*; Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2022

rh/jkb

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: State Commission on Criminal Sentencing Policy – Plea Agreements and Annual Report (The Judicial Transparency Act of 2022)

BILL NUMBER: HB412

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS