

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1458
 Judiciary

(Delegate Malone, *et al.*)

Maryland State Commission for Criminal Sentencing Policy – Sentencing
 Guidelines – Plea Agreements
 (Truth in Plea Deals Act of 2020)

This bill establishes that a sentence imposed pursuant to a plea agreement may not be deemed to be compliant with the sentencing guidelines unless the sentence falls within the actual sentencing guidelines range.

Fiscal Summary

State Effect: General fund expenditures for the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) increase by \$8,800 in FY 2021 only for computer reprogramming. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	8,800	0	0	0	0
Net Effect	(\$8,800)	\$0	\$0	\$0	\$0

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

Local Effect: The bill is procedural and is not expected to materially affect local finances.

Small Business Effect: None.

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 voting members, including members of the Judiciary, members who are active in the Maryland criminal justice system, members of the General Assembly, and public representatives.

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 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. 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.

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, home detention, and work release) is compliant if the initial sentence plus 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.

Sentences pursuant to an American Bar Association (ABA) plea agreement are guidelines-compliant. MSCCSP advises that it adopted this policy in July 2001 to acknowledge that ABA plea agreements reflect the consensus of the local view of an appropriate sentence within each specific community. The policies regarding corrections options and ABA plea agreements allow the court to set a sentence compliant with the guidelines that considers the individual needs of the offender, such as substance abuse treatment, as opposed to incarceration.

In fiscal 2019, MSCCSP received guidelines worksheets for 93.2% of guidelines-eligible cases (11,005 sentencing events). The overall guidelines compliance rate was 82.2%. According to MSCCSP, a review of the Maryland Sentencing Guidelines Database indicates that 48.5% (5,337) of sentencing events in the State's circuit courts during fiscal 2019 were resolved by an ABA plea agreement. Of those sentencing events, 54.5% (2,909) of the sentences were within the recommended guidelines range, 37.4% (1,996) of the sentences were below the recommended guidelines range, and 8.1% (432) of the sentences were above the recommended guidelines range.

State Expenditures: General fund expenditures for MSCCSP increase by \$8,750 in fiscal 2021 only for computer reprogramming of the Maryland Automated Guidelines System to revise the calculation of sentencing guidelines compliance to reflect the bill's provisions.

The Judiciary advises that the bill may result in judges being less inclined to accept plea agreements that are below or higher than the sentencing guidelines range, resulting in additional court time for adjudication of criminal cases currently resolved through plea agreements. However, any such impact is not anticipated to materially affect the workload or finances of the Judiciary. As previously mentioned, the guidelines are voluntary and judges can depart from the guidelines at their discretion.

The Office of the Public Defender advises that the bill does not have a fiscal or operational effect and does not affect the representation it provides to its clients.

Local Fiscal Effect: The bill is not expected to materially affect local finances or operations. The Maryland State's Attorneys' Association advises that the bill does not have a fiscal or operational impact on prosecutors.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): 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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