



Forthcoming Changes to Guidelines-Compliant Binding Pleas

Effective April 1, 2021, the Maryland Sentencing Guidelines Manual and corresponding language at COMAR 14.22.01.17 will be amended to update the instructions regarding binding pleas that are deemed guidelines-compliant. The purpose of this briefing is to inform the courts and criminal justice practitioners about the pending update. Please note that this amendment is specific to instructions regarding binding pleas as they relate to guidelines-compliance and does not affect Maryland Rule 4-243 as it relates to binding pleas in general. **Judges, please make sure to share this update with any court staff who complete guidelines worksheets in the Maryland Automated Guidelines System on your behalf.**

How were the binding-plea agreement compliance instructions amended?

In 2020, the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) reviewed definitions of binding plea agreements from other jurisdictions, examined relevant Maryland case law¹ and analyzed data on sentences for guidelines-eligible cases from 2017-2019. Informed by this review, the Commission agreed at its December 8, 2020, meeting, that the term “ABA plea agreement” is not universally known and should be replaced with the more intuitive “MSCCSP binding plea agreement.” Further, the MSCCSP adopted proposed revisions to clarify that a binding plea involves agreement from all three parties and to confirm that the court maintains the discretion to accept or reject the plea. Finally, the MSCCSP adopted language to clarify that an MSCCSP binding plea agreement means an agreement to a specific amount of active time (if any), not merely a sentence cap or range. Effective April 1, 2021, the revised language at COMAR 14.22.01.17 and mirrored in the Maryland Sentencing Guidelines Manual will read:

~~ABA plea agreement~~ MSCCSP binding plea agreement

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, or other judicial action. 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.

Why did the MSCCSP vote to amend the instructions regarding the type of plea agreements that are deemed compliant with the sentencing guidelines?

The MSCCSP adopted the ABA plea agreement compliance policy in 2001 to acknowledge that ABA plea agreements reflect the consensus of the local view of an appropriate sentence within each specific community. However, the MSCCSP observed variation from court to court

¹ Relevant case law includes but is not limited to: *Smith v. State*, 453 M 561 (2017); *Bonilla v. State*, 443 Md 1 (2015); and *Cuffley v. State*, 416 Md. 568 (2010).



regarding the level of specificity required for a plea agreement to be considered an ABA plea. For example, in some courts, a binding plea agreement may involve an agreement to cap the sentence at the upper guidelines or an agreement to a broad range. One of the main goals of the sentencing guidelines is to help ensure consistency in sentencing. The MSCCSP believes this amendment will bring greater uniformity by offering clarified instructions for the application of the sentencing guidelines.

The MSCCSP believes the revised definition and term for guidelines-compliant pleas will reduce the number and percentage of pleas that are considered guidelines-compliant because judges may choose to accept the binding plea terms only if he/she agrees with a specified active time that was presented in agreement by both the State and the defense. This will bring greater transparency to guidelines-compliant sentences. The MSCCSP believes the “tightened” definition will strengthen public trust and provide more uniformity in understanding what pleas are guidelines-compliant.

What are some examples of an “MSCCSP binding plea agreement”?

Pursuant to Maryland Rule 4-343(c), the court maintains the ability to accept a “binding plea agreement”. The binding plea agreement will be deemed compliant with the guidelines only if it meets the criteria outlined above to include an agreement to a specific amount of active time (if any) or if the active time falls within the recommended guidelines range.

Example scenarios to determine if binding plea agreements are guidelines-compliant

Scenario 1: The guidelines for the sentencing event are 2 years to 4 years. The State and the defense present to the court a plea agreement to a sentence of 3 years, suspend all but 1 year. The court accepts this agreement, making it **an MSCCSP binding plea agreement** and therefore the sentence is deemed guidelines-compliant.

Scenario 2: The guidelines for the sentencing event are 2 years to 4 years. The State and the defense present to the court a plea agreement to a sentence range anywhere from probation to 2 years. The court accepts this agreement and sentences the defendant to 3 years, suspend all but 1 year. Because the plea agreement involves a general range rather than a specific amount of active time, this is not an MSCCSP binding plea agreement and the sentence is deemed a departure below the guidelines (i.e., 1 year of active time is less than the lower guidelines limit of 2 years).