

## **Impact of Recent Court of Appeals Decisions on Binding Plea Agreements within the Guidelines**

The Maryland Court of Appeals recently filed opinions in *Cuffley v. State (2010)* and *Baines v. State (2010)* which impact the use of a binding plea agreement that calls for a sentence “within the sentencing guidelines”. In summary, *Cuffley* and *Baines* find:

If the parties to a binding plea agreement agree that the defendant will be sentenced “within the guidelines,” without making clear on the record of the plea proceeding that the guidelines sentence refers only to actual incarceration, then the court may not impose a sentence that includes a suspended portion in excess of the maximum sentence provided by the guidelines.

The Court did recognize that the *Maryland Sentencing Guidelines Manual (MSGM)* states that “suspended time is *not* considered in determining whether the sentence falls within the recommended guidelines range” and “the guidelines range represents only non-suspended time” (*MSGM*, ch. 13.1 at 55, 2010). However, the findings in *Cuffley* and *Baines* emphasize that the State or defense counsel must make the terms of the agreement absolutely clear on the record of the plea proceeding and the term must be fully explained to the defendant on the record before the court accepts the defendant’s plea.

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) shares this information to ensure that all parties are aware of these recent findings. A reference to the *Cuffley* and *Baines* opinions has been added to the corresponding page (p. 55) of the *MSGM* to reflect the impact of these decisions. This updated page is attached and may be printed and inserted in place of the affected page of your hard copy of the *May 2010 MSGM*.

# Determining Whether a Sentence is Within the Guidelines Range

The recommended guidelines sentence is provided as a range. This range is determined by the seriousness of the offense and the criminal history of the offender. This chapter discusses how to determine if a sentence is within the guidelines range.

## 13.1 Suspended Time

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Suspended time *is not* considered in determining whether the sentence falls within the recommended guidelines range. The guidelines range represents only non-suspended time.<sup>2</sup>

**Example:** If the guidelines range for a particular case is 6 to 12 years, a few examples of sentences within the guidelines are 10 years with 4 years suspended or 15 years with 5 years suspended. If, however, a judge gives 6 years, all suspended, the sentence will be outside the guidelines.

## 13.2 Credit for Time Served

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Time served *is* considered in determining whether the sentence falls within the recommended guidelines range. If a judge sentences an offender to pre-sentence incarceration time with no additional post-sentence incarceration time and the length of credited pre-sentence incarceration exceeds the upper range, then the sentence is deemed guidelines compliant.

**Example 1:** If the guidelines range for an event is 3 months to 9 months, and an offender is sentenced to 6 months with credit for 6 months already served, the sentence is within the guidelines range.

**Example 2:** If the guidelines range for an event is Probation to 3 months, and an offender is sentenced to 6 months with credit for 6 months already served, the sentence is deemed to be compliant with the guidelines.

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<sup>2</sup> *But see Cuffley v. State*, -- Md. --, -- A.2d -- (No.136/08 Oct. 28, 2010) and *Baines v. State*, -- Md. --, -- A.2d -- (No. 135/08 Oct. 28, 2010). In *Cuffley* and *Baines*, the Court recognized that suspended time is not included in determining whether the sentence falls within the guidelines for purpose of the Maryland Sentencing Guidelines. However, the Court found that where a binding plea agreement called for a sentence “within the guidelines” without making clear on the record that such sentence applied only to actual incarceration, a trial court could not impose a sentence that included a suspended portion in excess of the maximum sentence provided in the guidelines.