

Chapter 07 - Supervision and Monitoring
Section 11 - Earned Compliance Credits
Authority: Correctional Services Article, §6-117

A. Introduction.

(1) Maryland statute mandates that certain supervised individuals sentenced after December 31, 2012 be eligible to accrue earned compliance credits. Effective October 1, 2017, the statute is amended to expand the population of supervised individuals who are eligible to accrue earned compliance credits and thereby reduce the duration of their active supervision period. (*MD Code Annotated*, Correctional Services Article, §6-117.)

(2) This section:

- (a) Sets forth the essential terms and definitions applicable to the earned compliance credits program;
- (b) Identifies the individuals eligible and ineligible to accrue earned compliance credits;
- (c) Establishes the procedures for agents to abate the active supervision of individuals who have earned sufficient compliance credits for abatement; and
- (d) Specifies the conditions or events under which an individual shall be returned to active supervision after the individual's active supervision has been abated.

B. Scope. This section does not apply to an individual who is supervised for a crime of violence or is otherwise ineligible to earn compliance credits, as set forth below.

C. Definitions.

(1) In this section, the following terms have the meanings indicated.

(2) Terms defined.

(a) "Abatement" means an end to active supervision of an eligible individual, without effect on the legal expiration date of the case or the individual's obligation to:

- (i) Obey all laws;
- (ii) Report if instructed to report; and
- (iii) Obtain permission from the individual's agent before relocating residence.

(b) "Crime of violence" means:

- (i) Abduction;
- (ii) Arson in the first degree;
- (iii) Kidnapping;
- (iv) Manslaughter, except involuntary manslaughter;
- (v) Mayhem;
- (vi) Maiming;
- (vii) Murder;
- (viii) Rape;
- (ix) Robbery;
- (x) Carjacking;
- (xi) Armed carjacking;
- (xii) Sexual offense in the first degree;
- (xiii) Sexual offense in the second degree;
- (xiv) Use of a handgun in the commission of a felony or other crime of violence;
- (xv) Child abuse in the first degree;
- (xvi) Sexual abuse of a minor;
- (xvii) An attempt to commit any of the crimes described in items (i) through (xvi) of this subsection;
- (xviii) Assault in the first degree;
- (xx) Assault with intent to murder;
- (xxi) Assault with intent to rape;
- (xxii) Assault with intent to rob;
- (xxiii) Assault with intent to commit a sexual offense in the first degree; and
- (xxiv) Assault with intent to commit a sexual offense in the second degree.

(3) "Earned compliance credit" means a monthly reduction of 20 days from an eligible individual's active supervision period.

(4) "Eligible individual" means a supervised person who meets the initial eligibility requirements for accrual of earned compliance credits.

D. Earned compliance credit eligibility and ineligibility.

(1) An individual is initially eligible for accrual of earned compliance credits if the individual is not being supervised for certain crimes and the individual is not being supervised through ICOTS. Generally, the types of crimes that exclude an individual from earning compliance credits are crimes of violence, sexual offenses, and drug-related offenses. The specific crimes that, by law, exclude an individual from accruing compliance credits are listed in paragraphs (2) through (4) of this subsection.

(2) **Sexual offenses.** An individual is ineligible to earn compliance credits if the individual is being supervised for or has ever been convicted of a sexual offense listed in Criminal Law Article, Title 3, Subtitle 3. These offenses include:

- (a) §3-303. Rape in the first degree;
- (b) §3-304. Rape in the second degree;
- (c) §3-305. Sexual offense in the first degree;
- (d) §3-306. Sexual offense in the second degree;
- (e) §3-307. Sexual offense in the third degree;
- (f) §3-308. Sexual offense in the fourth degree;
- (g) §3-309. Attempted rape in the first degree;
- (h) §3-310. Attempted rape in the second degree;
- (i) §3-311. Attempted sexual offense in the first degree;
- (j) §3-312. Attempted sexual offense in the second degree;
- (k) §3-314. Sexual conduct between correctional or Department of Juvenile Services employee or court-provided services provider and inmate or confined child;
- (l) §3-315. Continuing course of conduct with child;
- (m) §3-321. Sodomy;

(n) §3-322. Unnatural or perverted sexual practice;

(o) §3-323. Incest; and

(p) §3-324. Sexual solicitation of minor.

Note: An individual who has ever been convicted of a disqualifying sexual offense is ineligible to accrue compliance credits, regardless of whether the offense for which the individual is being supervised is a sexual offense. For example, an individual is presently being supervised for a crime that does not in itself disqualify the individual from accruing compliance credits. If the individual was previously convicted of a sexual offense, the individual may not be awarded compliance credits.

(3) Other bases for ineligibility. In addition to the above-listed bases which render an individual ineligible to earn compliance credits, an individual may not earn compliance credits if the individual is:

(a) Subject to or eligible for sexual offender registration in this state or any other jurisdiction;

(b) Being supervised for the crime of homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*; or

(c) Being supervised for a drug or drug-related offense listed in paragraph (4) of this subsection.

(4) Drug and drug-related offenses. An individual is ineligible to earn compliance credits if the individual is being supervised for certain drug or drug-related offenses. These offenses, each preceded by pinpoint citation to Criminal Law Article, include:

(a) §5-612. Volume dealer;

(b) §5-613. Drug kingpin;

(c) §5-614. Importer of certain controlled dangerous substances;

(d) §5-627. Controlled dangerous substance near a school or in a school vehicle; and

(e) §5-628. Use of a minor to manufacture, deliver, or distribute a controlled dangerous substance.

Note: An employee may directly access the *Maryland Code* through this link <https://www.lexisnexis.com/hottopics/mdcode/> and clicking the “I AGREE” button in the box entitled, “Code of Maryland Unannotated and Rules - Free Public Access.”

(5) **Consultation with supervisor regarding eligibility or ineligibility determination.** When an agent or monitor has reason to question the correctness of the determination that a particular supervised individual is eligible or ineligible to earn compliance credits, the agent or monitor shall consult with the agent's or monitor's immediate supervisor. The supervisor shall review the matter and, if needed, consult with appropriate authority to obtain resolution.

E. Automated eligibility determination. An individual's eligibility for earned compliance credits shall be automated through the Department's Offender Case Management System (OCMS). Unless an individual is ineligible to earn compliance credits or the individual is otherwise excluded from earning them, compliance credits shall be automatically awarded.

Note: Eligibility to earn compliance credits is not a guarantee that an individual will receive credits. Eligibility is a threshold determination which means that an individual is permitted by law to receive compliance credits. If an eligible individual is compliant with the terms and conditions of supervision order each month, the individual shall automatically accrue compliance credits.

F. Exclusion violations. Failure to comply with the terms and conditions of supervision may preclude an individual from receiving compliance credits temporarily. If an individual is compliant, the agent need make no entry in OCMS. The credits will be automatically awarded to each eligible individual with an active, non-active duplicate or non-active unavailable case.

G. Earned compliance credit reckoning procedures.

(1) For each eligible individual who incurs a sanction in a calendar month, an agent shall:

- (a) Access the individual's ECC Summary screen within OCMS; and
- (b) Select the type of infraction committed by the individual.

(2) The agent's ECC Summary screen entry shall be based upon the agent's:

- (a) Earned compliance credit training; and
- (b) Knowledge of the individual's compliance or noncompliance during the previous month.

Note: Earned compliance credit calculations are based upon a calendar month. Accordingly, the particular date in a month that an eligible individual's active supervision commences is inconsequential to the calculation. For instance, if active supervision of two eligible individuals begins during the same month, both can receive earned compliance credits, regardless of what date, during that month, their active supervision began.

(3) **Denial of compliance credits for payment-obligation arrearage.** An individual may not receive compliance credits for any month in which there exists a payment obligation arrearage exceeding 60 days.

(4) Once earned, compliance credits may be rescinded for cause, including the erroneous award of compliance credits, and only by a supervisor. Similarly, a supervisor may award compliance credits for a reckoning period in which credits were previously denied. These actions, where warranted, shall be accomplished by a supervisor through use of the edit tab function in the ECC History screen.

(5) **Time limitation.** An agent shall take the actions set forth in paragraph (1) of this subsection no later than the 27th day of each calendar month. This time limitation is based upon the static date restriction established for the monthly automated calculation of earned compliance credits

H. Abatement.

(1) **Abatement date listing.** The ECC History screen within OCMS displays two dates for each eligible individual: the individual's legal expiration date and the individual's abatement date. The former is fixed but the latter changes as the individual earns compliance credits. Unless a supervised individual's updated abatement date is available through KIOSK, the supervising agent shall regularly inform the supervised individual of the individual's abatement date. When the individual's abatement date is reached, an agent shall provide the sentencing court or Parole Commission, as applicable, with notice of pending abatement, as set forth immediately below.

(2) **Notice of pending abatement of active supervision.** At least 90 calendar days before an individual's OCMS-listed abatement date is reached, an agent shall send notice to the sentencing court, Parole Commission, or both, as applicable, of the individual's projected active-supervision abatement date.

Note: Inasmuch as abatement is mandated by law, the notice required to be sent to the sentencing court, Parole Commission, or both, does not take the form of a request.

(3) **Instructions to supervised individual.** On or before an individual's active-supervision abatement, the individual's agent shall, in writing, inform the individual of the effective date of active-supervision abatement and instruct the individual to:

(a) If applicable, continue remitting payments (*See Note below*); and

(b) Contact the agent immediately if, prior to the legal expiration date of the abated case, the individual is arrested, otherwise is charged with a crime, or relocates residence.

Note: The payments referred to in paragraph (3) of this subsection are restitution and restitution collection fee payments only. See paragraph (4)

immediately below regarding other payment obligations. Additionally, if a form containing the instructions set forth in paragraph (3) is available, an agent shall use that form to meet the requirement that the instructions be in writing.

(4) Payment obligation modification. Abatement will usually require modification of an individual's payment obligation. This is because neither a supervision fee nor a program fee may be charged to an individual during the months that the individual's case is abated. Accordingly, an agent or monitor must edit an individual's payment obligation to ensure that neither a supervision fee nor a program fee is assessed during the abatement period.

(5) Problem-solving court waiver of abatement. If a supervised individual participates in a Problem Solving Court, an agent shall determine whether the supervised individual's participation required the supervised individual to waive abatement. If so, the individual will earn compliance credits but, pursuant to the waiver of abatement, will not be entitled to abatement.

I. Abatement Rescission.

(1) Order required to rescind abatement. Abatement may not be rescinded absent an order to rescind the abatement, issued by the sentencing court or the Parole Commission, as applicable.

(2) Report to court or Parole Commission required. Not later than 10 days after an agent learns of an infraction for which a return to supervision is appropriate, the agent shall submit a report to the sentencing court or Parole Commission, as applicable, requesting that active supervision be resumed and setting forth the specific basis for the request.

(3) Infractions triggering report. The type of infractions that would trigger the submission of the report described in paragraph (2) of this subsection include the individual's:

- (a) Incurring a new criminal conviction;
- (b) Failing to pay restitution; and
- (c) Failing to abide by or complete a special condition.

(4) Additional infractions. In addition to the infractions listed in paragraph (3) of this subsection, an agent may request rescission of abatement if the agent's supervisor concurs that an infraction warrants the request.