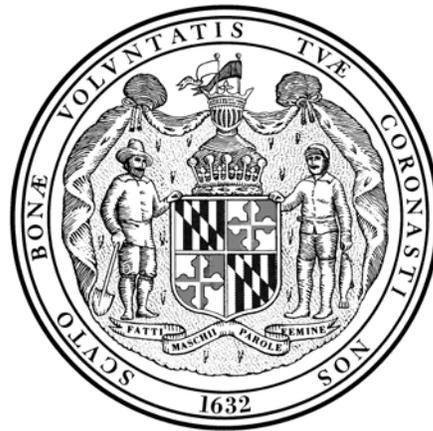


**MARYLAND STATE COMMISSION ON
CRIMINAL SENTENCING POLICY**

ANNUAL REPORT



DECEMBER 2002

MARYLAND STATE COMMISSION ON
CRIMINAL SENTENCING POLICY

ANNUAL REPORT

December 2002

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Chairman

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Executive Director

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EXECUTIVE SUMMARY

Created by the Maryland General Assembly in May, 1999, the State Commission on Criminal Sentencing Policy (SCCSP) received authorization to adopt voluntary sentencing guidelines "for sentencing within the limits established by law which may be considered by the sentencing court in determining the appropriate sentence for defendants who plead guilty or nolo contendere to, or who were found guilty of crimes in a circuit court." The General Assembly also empowered the SCCSP to adopt guidelines identifying appropriate offenders for corrections options programs, to collect and automate the state sentencing guidelines worksheets, to use a projection model to forecast state prison populations and fiscal impacts of new legislation, and to conduct guidelines training and orientation.

In 2002, the SCCSP classified criminal offenses passed by the 2002 Maryland General Assembly; began reporting of new data on reconsidered sentences, types of pleas, and victims' involvement in sentencing; considered legislation concerning diminution credits; provided data and information to state agencies and media, including the Baltimore City Criminal Justice Coordinating Council and several of its component agencies; performed training sessions across the state for users of the guideline manuals and worksheets; completed a training video for guidelines use and began development of online applications of the process; continued use of its advisory worksheet workgroup composed of practitioners from around the state; piloted of "deliberative focus groups" on correctional options and disseminated a report on their findings and recommendations; worked with the state Family Violence Council on better data collection on felony domestic violence offenses; and posted research reports on topics related to sentencing and to criminal justice to provide a resource for state policymakers desiring thorough information for their decisions. In 2002, the SCCSP also revised its web site (www.msccsp.org) to make it more thorough and user-friendly and to allow citizens and policymakers to have better access to information concerning Maryland circuit court sentencing.

The SCCSP continued its recording and reporting of data on state circuit court sentencing. The analysis in this report revealed that, although aggregate rates of judicial departures remain above a benchmark of 33%, the aggregate rate declined from 58% to 51% between 1999 and 2000, and then again from 51% to 49% between 2000 and 2001. In the past three years, departure rates across the board have experienced a significant downward trend. Between 1999 and 2000, all judicial circuits experienced a decrease in departure rates. This overall downward trend continued through 2001, although some circuits experienced no rate changes and the rates of others actually increased. In the Eighth Circuit, a very high departure rate for drug offenses in combination with the large number of drug offenses relative to person and property offenses strongly influenced its aggregate compliance rate. The exploratory analysis of compliance for drug offenses from 1999 through 2001 suggests that the high departure rate stems primarily from the high departure rate for cocaine and heroin distribution cases (Seriousness Category III – Without Importation). If these two offenses were excluded from the departure calculation, the statewide departure rate for all remaining drug offenses would have decreased by 32% (65%-33%). Similarly, if these two offenses were excluded from the statewide departure rate for all offenses, the overall rate would have decreased by 19% (53%-34%) for the 1999-2001 period.

Comparison of judicial departure rates by mode of disposition (plea agreement, plea without agreement, jury trial, or court trial) revealed that sentences imposed as a result of a plea agreement or plea without

agreement were more likely to fall below the recommended sentencing guidelines range (although this was not true for property offenses). Upward departures were most common among cases resolved by a jury trial.

In 2001, the SCCSP decided that judicial departure rates were affected by two factors that needed inclusion in reasonable discussions of departures from sentencing guidelines. First, the SCCSP agreed to count sentences that resulted from “ABA pleas,” that is, pleas binding on prosecution, defense, and the sentencing judge, as within guidelines to reflect the consensus of the parties and the communities that they represented. Second, recognizing the state’s interest in promoting sentences to correctional options, such as substance abuse treatment and other similar programs, even though those sentences might not fall within the sentencing guidelines, the SCCSP agreed to accept sentences to certain specified alternative sanctions (specified in COMAR) as within guidelines.

As to be expected, these adjusted departure rates fell in all of the eight circuits. For the Second Circuit, the decrease was relatively small at 4% (30% to 26%). The Eighth Circuit, on the other hand, experienced, a much larger decrease (66%), attributable to the large number of drug cases disposed of by ABA pleas in that circuit. The second largest decrease can be found in the Seventh Circuit (21%). The departure rates for the remaining five circuits decreased between 5% and 12%. Overall, the statewide departure rate fell by approximately 40%.

In 2002, the Maryland General Assembly passed HB1143, which required the SCCSP to “review reductions or increases in original sentences” due to reconsideration of sentences in state circuit courts and to report those sentences in its Annual Report by offense type and circuit court. As this is the first year of implementing the data requirement, the SCCSP does not have baseline data with which to compare these submissions. The SCCSP is working closely with the state Administrative Office of the Courts (AOC) to ensure that all circuit court judges know to submit the worksheets for reconsidered sentences and to try to compare its data with AOC data. In addition, the SCCSP has coordinated with the Maryland Bar Association in its report with the law schools at the University of Maryland and the University of Baltimore on the factors leading to reconsidered sentences. The SCCSP expects to refine its reporting process in the coming year to provide the most thorough portrait possible of the use of reconsidered sentences in the state circuit courts.

In 2003 the SCCSP will examine possible adjustments to the sentence ranges in the cell of each guidelines matrix, as well as considering inclusion of correctional options into the matrices. It will also report data on the new items added to the sentencing guidelines worksheet, such as additional victim information and data on reporting of time to be served before parole consideration for violent offenses. New reports on sentencing-related issues and concerns will go up on the SCCSP web site on a regular basis for use by the public and state policymakers, including more of its new “Sentencing FAX” reports and reports on the future effect of technological change on sentencing practices in Maryland and across the nation. The SCCSP will continue its use of Deliberative Focus Groups (DFG), perhaps moving into other topic areas such as public priorities for the state sentencing policy agenda. SCCSP staff will develop and expand its training exercises and materials to ease and promote the use of the guidelines in all circuit courts and oversee implementation of the worksheet process on-line. The SCCSP will work diligently to fulfill its legislatively mandated mission of bringing proportional, nondisparate sentencing to the state criminal justice process and to the people of Maryland.

THE STATE COMMISSION ON CRIMINAL SENTENCING POLICY

Establishment and Charge of the State Commission

The Maryland General Assembly created the State Commission on Criminal Sentencing Policy (SCCSP) in May, 1999, under Chapter 648 of the Laws of Maryland 1999. In July, 1999, the SCCSP formally replaced its predecessor advisory commission, the Maryland Commission on Criminal Sentencing Policy (MCCSP). The enabling legislation for the SCCSP set out six legislative goals for sentencing in Maryland, stating that:

1. Sentencing should be fair and proportional and that sentencing policies should reduce unwarranted disparity, including any racial disparity, in sentences for offenders who have committed similar offenses and have similar criminal histories;
2. Sentencing policies should aid citizen understanding of the time that an offender will actually be incarcerated, if any;
3. Sentencing guidelines are voluntary and that it is voluntary for the courts to sentence within the guidelines;
4. Prison capacity and prison usage should give priority to the incarceration of violent and career offenders;
5. Sentencing policies should preserve meaningful judicial discretion in the imposition of sentences and sufficient flexibility to permit individualized sentences; and
6. Sentencing judges in every jurisdiction in the State should be able to impose the most appropriate criminal penalties, including corrections options programs for appropriate offenders.

The SCCSP was designed and authorized with the purpose of fulfilling those legislative intentions.

SCCSP Composition

In 2002, the SCCSP was composed of 19 voting and 3 ex officio members listed below. The Chairman, the Honorable Andrew L. Sonner, was appointed by the Governor to lead the State Commission on Criminal Sentencing Policy.

Table 1. Current Members of the State Commission on Criminal Sentencing Policy

<i>Members Appointed by the Governor</i>	
Chair	Honorable Andrew L. Sonner, <i>Montgomery County</i>
State's Attorney	Honorable Robert Riddle, <i>Calvert County</i>
Criminal Defense Attorney	Domenic R. Iamele, Esquire, <i>Howard County</i>
Victims' Advocacy Group	Russell P. Butler, Esquire, <i>Prince George's County</i>
Law Enforcement	Colonel David B. Mitchell, <i>Prince George's County</i>
Criminal Justice or Corrections Policy Expert	Charles F. Wellford, Ph.D., <i>Anne Arundel County</i>
Local Detention Center	Barry L. Stanton, <i>Prince George's County</i>
Public	Janis Judson, Ph.D., <i>Frederick County</i>
Public	Arthur A. "Bud" Marshall, Jr., Esquire, <i>Prince George's County</i>
<i>Members Appointed by the Chief Judge of the Court of Appeals of Maryland</i>	
Court of Appeals	Honorable Arrie W. Davis, <i>Baltimore City</i>
Circuit Court	Honorable John C. Themelis, <i>Baltimore City</i>
District Court	Honorable Timothy J. Doory, <i>Baltimore City</i>
<i>Members Appointed by the President of the Senate</i>	
Senator	Honorable Delores G. Kelley, <i>Baltimore City and County</i>
Senator	Honorable Clarence M. Mitchell IV, <i>Baltimore City and County</i>
<i>Members Appointed by the Speaker of the House</i>	
Delegate	Honorable Dana Lee Dembrow, <i>Montgomery County</i>
Delegate	Honorable Joseph F. Vallario, Jr., <i>Prince George's County</i>
<i>Ex-Officio Members</i>	
Attorney General	J. Joseph Curran, Jr.
State Public Defender	Stephen E. Harris
Secretary of Public Safety & Correctional Services	Stuart O. Simms

SCCSP Authorizations

The General Assembly authorized the SCCSP to “adopt existing sentencing guidelines for sentencing within the limits established by law which shall be considered by the sentencing court in determining the appropriate sentence for defendants who plead guilty or nolo contendere to, or who were found guilty of crimes in a circuit court.” The sentencing guidelines, according to the enabling legislation, were to:

1. Specify the range of sentences applicable to crimes of given degree of seriousness;
2. Specify a range of increased severity for defendants previously convicted of or adjudicated delinquent for one or more crimes before the current offense; and
3. Provide a list of aggravating or mitigating circumstances.

The SCCSP also has authority to “adopt guidelines to identify defendants who would be appropriate for participation in corrections options programs.” These guidelines are to be considered by the sentencing court in selecting either the ordinary guideline sentence for a defendant or sanctions under corrections options.

Furthermore, the SCCSP received the power to collect and automate the state sentencing guidelines worksheets with assistance from the Maryland Administrative Office of the Courts. Using the data collected, the SCCSP is to monitor circuit court sentencing practice and to adopt changes to the guidelines consistent with legislative intent. The data collected would also support the legislatively mandated use of a correctional population simulation model designed to forecast prison bedspace and resource requirements. Forecasts exceeding available state resources would have to include alternative guidelines recommendations to bring prison populations into balance with state resources.

The SCCSP also received the authority to conduct guidelines training and orientation for system participants and other interested parties in a timely manner. The SCCSP was to administer the guidelines system in consultation with the General Assembly and to provide formal fiscal and statistical information on proposed legislation concerning sentencing and correctional practice.

SCCSP ACTIVITIES IN 2002

The SCCSP had an active year in 2002. Its activities, described below, ranged from updating the sentencing guidelines process in the Code of Maryland Regulations (COMAR) to piloting special public focus groups on aspects of correctional options programs in the state.

COMAR. The Maryland General Assembly required in the SCCSP enabling legislation that the Commission put the process for completion of the voluntary sentencing guidelines into COMAR. While the initial work was achieved by 2001, classification of new offenses from the 2002 General Assembly and additions to the sentencing guidelines worksheet required new submissions in 2002. The additions

included new information on victim involvement in criminal sentencing and recording of data regarding announcement of 50% of sentences to be served prior to parole consideration, as required by state law. These new elements went into effect in October 2002.

Legislation considered. In 2001, the SCCSP voiced its support for legislation treating the “banking” of earned credits when serving prison sentences the same for those on mandatory supervision as for those on parole, and it repeated that support for the successful legislation in 2002. In addition, the SCCSP opposed legislation to require reporting of sentences by judges in cases involving violent offenses. The SCCSP did not oppose legislation mandating reporting of new sentences due to acceptance of petitions to reconsider previous sentences. The legislated requirement is provided later in this report. In 2002, the SCCSP began preparation for consideration of potential legislation on sex offender risk assessment, in conjunction with the state’s Joint Departmental Sex Offender Task Force. It also started work with the state Bar Association and the law schools at the University of Baltimore and the University of Maryland on the issue of judicial reconsideration of sentences.

Training and materials. SCCSP staff in 2002 continued its mandated work of supplying training and materials on the sentencing guidelines throughout the state. To supplement the additional work for COMAR, the SCCSP updated its sentencing guidelines manual and held training sessions around the state, at the invitation of circuits and districts. Staff also completed a training video for jurisdictions for future instruction of new personnel. The SCCSP continued work and consultation with its sentencing guidelines worksheet workgroup, composed of practitioners and users around the state, to provide regular feedback on use of and problems with the worksheets. Finally, the SCCSP began development of an on-line worksheet process accessible through the Internet, with greater expected efficiencies and cost-savings for all users.

Public information. While much of the SCCSP effort at public information and education went into its web site, discussed later in more detail, the SCCSP in 2002 maintained its development of different mechanisms to hear from the public and to let it know about state sentencing issues and policies. Commissioners and staff were speakers and participants at state, regional, and national meetings, conferences, and workshops on sentencing-related topics throughout 2002, including meetings in Anne Arundel, Frederick, and Montgomery Counties and in Cumberland, Westminster, and Baltimore City. In addition, the SCCSP completed its first use of “deliberative focus groups” (DFGs) to determine public reaction to correctional options and public recommendations for funding and implementing them. The first DFG was held in Howard County in 2001, and in 2002 DFGs were held in Prince George’s County and at the University of Maryland. The full report of the DFGs and their findings can be found on the SCCSP web site.

Subcommittee work. The SCCSP’s permanent subcommittee on sentencing guidelines did the initial work and made the recommendations for all the COMAR submissions mentioned above. In addition, the subcommittee in 2002 began consideration of the current sentencing practices of circuit courts for each cell of each matrix in the sentencing guidelines process. This consideration allowed initial deliberation on

what cells, if any, should be adjusted in the future and on the possible introduction of correctional options recommendations, such as Baltimore City's "Tamar's Children" program, into the matrices.

Special reports. The SCCSP issued several reports in 2002. (These are discussed further in the later section on the Commission web site.) Three reports—on effectiveness of sentencing guidelines systems, on trends in women's sentencing, and on trends in penalties for sexual abuse and domestic violence—were completed early in 2002. In addition, a full report on the DFGs was completed and disseminated statewide and nationally. Finally, the SCCSP began a periodic publication, "Sentencing FAX," which provided one-page descriptions of basic statistical data on Maryland sentencing to state and national policymakers. (These documents can be found in the Appendix at the end of this report.)

THE SCCSP WEB SITE: RESOURCE FOR STATE POLICYMAKERS

In 2002, the SCCSP continued its commitment to develop a thorough and wide-ranging information and resource base for criminal justice decision-makers in Maryland and across the country. In addition to providing electronic access to the SCCSP's library of research and data on sentencing related topics, the website has become the primary source of updates and information on sentencing policy and procedures to criminal justice practitioners in the state.

The site has changed dramatically in design in 2002 to improve the look and navigability. The site is now divided into 5 sections: Commission, Guidelines, Publications, Data, and Resources.

The *Commission* section provides information about the Maryland State Commission on Criminal Sentencing Policy. Among the items within this section are a description of the Commission's origin and purpose, a list of current Commission members, a staff directory, and copies of the minutes from past meetings.

The *Guidelines* section was designed to assist those responsible for the completion of sentencing guidelines worksheets. This is the main section for practitioner use. Among the items found within this section are an overview of the current guidelines, a copy of the current Maryland Sentencing Guidelines Manual including eight sample cases, a guidelines offense table, and information on training.

The *Publications* section contains publications produced by the SCCSP. Among the items within this section are copies of the Commission's most recent annual report, quarterly newsletter, and *Sentencing FAX*, a periodic publication highlighting data on sentencing practices in the State's circuit courts. In addition, this section contains briefings on such topics related to sentencing and other criminal justice issues.

The *Data* section provides data extracted from sentencing guidelines worksheets submitted to the SCCSP. This is an entirely new feature of the website. Here data have been extracted from the SCCSP's

annual reports to show sentencing trends in the state. In addition to a brief overview of the data, this section contains tables on departure rates by circuit, offense type (person, drug, and property), and disposition (plea, plea without agreement, court trial, and jury trial). A copy of the Commission's information request policy and form can also be found in this section.

The *Resources* section provides information on sentencing-related resources. Included within this section are reports and other publications on sentencing research, links to Maryland State Government agencies, other sentencing commissions, as well as state and national criminal justice organizations.

On the front page there is a sidebar with one additional section, *News and Information*. This section is used to highlight the most recent additions to the website. Updates to the site are also described in the *What's New* section accessible on the sidebar. This page contains a listing of each update to the site, with links to the new information. Here attention is drawn to updates to the Sentencing Guidelines Worksheet and the Sentencing Guidelines Manual as well as legislative changes such as the recodification of the criminal code.

The SCCSP staff will continue to use the website as a primary means of communication with the criminal justice field. Updates and new information relevant to sentencing practices in the state will continue to appear on the site.

JUDICIAL DEPARTURE FROM MARYLAND'S VOLUNTARY SENTENCING GUIDELINES

The SCCSP has been charged with the responsibility of annually examining judicial departure from the sentencing guidelines. This analysis is based on data extracted from the sentencing guidelines worksheets that are completed when a defendant is sentenced in circuit court. The Administrative Office of the Courts (AOC) compiled these data between July 1983 and June 2000. Beginning in July 2000, the SCCSP assumed the responsibility of compiling sentencing guidelines worksheet data. Since that time, the SCCSP has devoted significant resources to the on-going process of merging the two databases and checking for errors. In the process, additional worksheets have been located and, subsequently, may affect the overall totals.

Analyses of judicial departures in Maryland have traditionally focused on sentences for single count convictions because they permit the examination of departures by crime category, offense type, and cell of the sentencing matrix. Since multiple count convictions can consist of any combination of person, drug, and property offenses, meaningful interpretations of sentencing patterns within matrices cannot be obtained. An additional data restriction, the lack of record-keeping reliably distinguishing between multiple sentences that run consecutively and concurrently during particular years, precluded analyses of multiple count convictions in the present report.

The present examination of judicial departure rates will focus on sentences for **single** count convictions between calendar years 1999 and 2001. Single count convictions account for approximately 75% of the

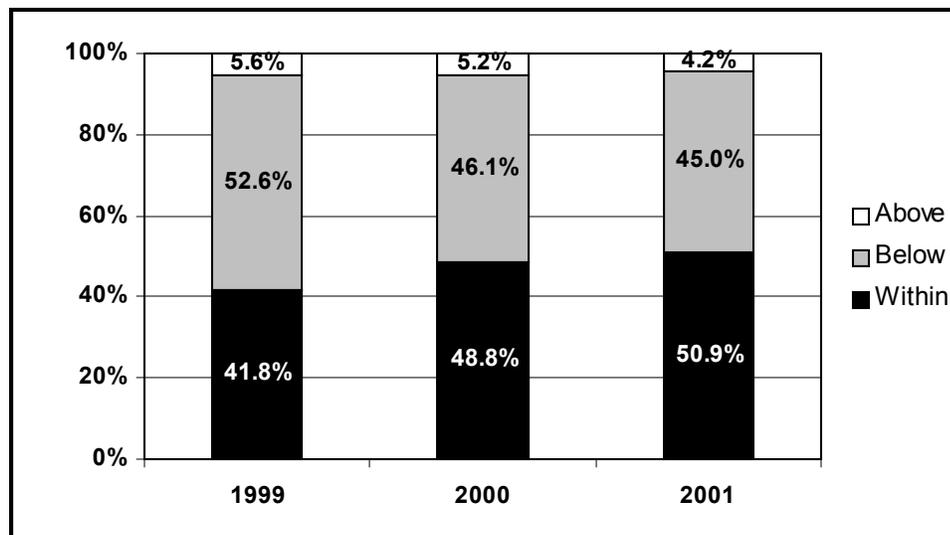
total number of guidelines worksheets received each year. For example, of the 11,000 sentencing guidelines worksheets submitted to the SCCSP in 2001, roughly 8,000 contained single count convictions.

Judicial Departure Rates Overall

Previous analyses of judicial departure rates have indicated the departures are generally high. For example, the Maryland Commission on Criminal Sentencing Policy (MCCSP) examined judicial departures over a ten-year period (1987-1996) and found the aggregate departure rate across crime categories to be 45%. When judges departed from the guidelines during this time period, they were more likely to sentence below the recommended sentencing guidelines range than above the range.

Figure 1 provides a breakdown of the rates from 1999 through 2001. In the past three years, with greater SCCSP effort at improving them, departure rates have declined 9%. The comparison revealed that although aggregate rates of judicial departures were above the benchmark, the aggregate rate declined from 58% to 51% between 1999 and 2000, and then again from 51% to 49% between 2000 and 2001.

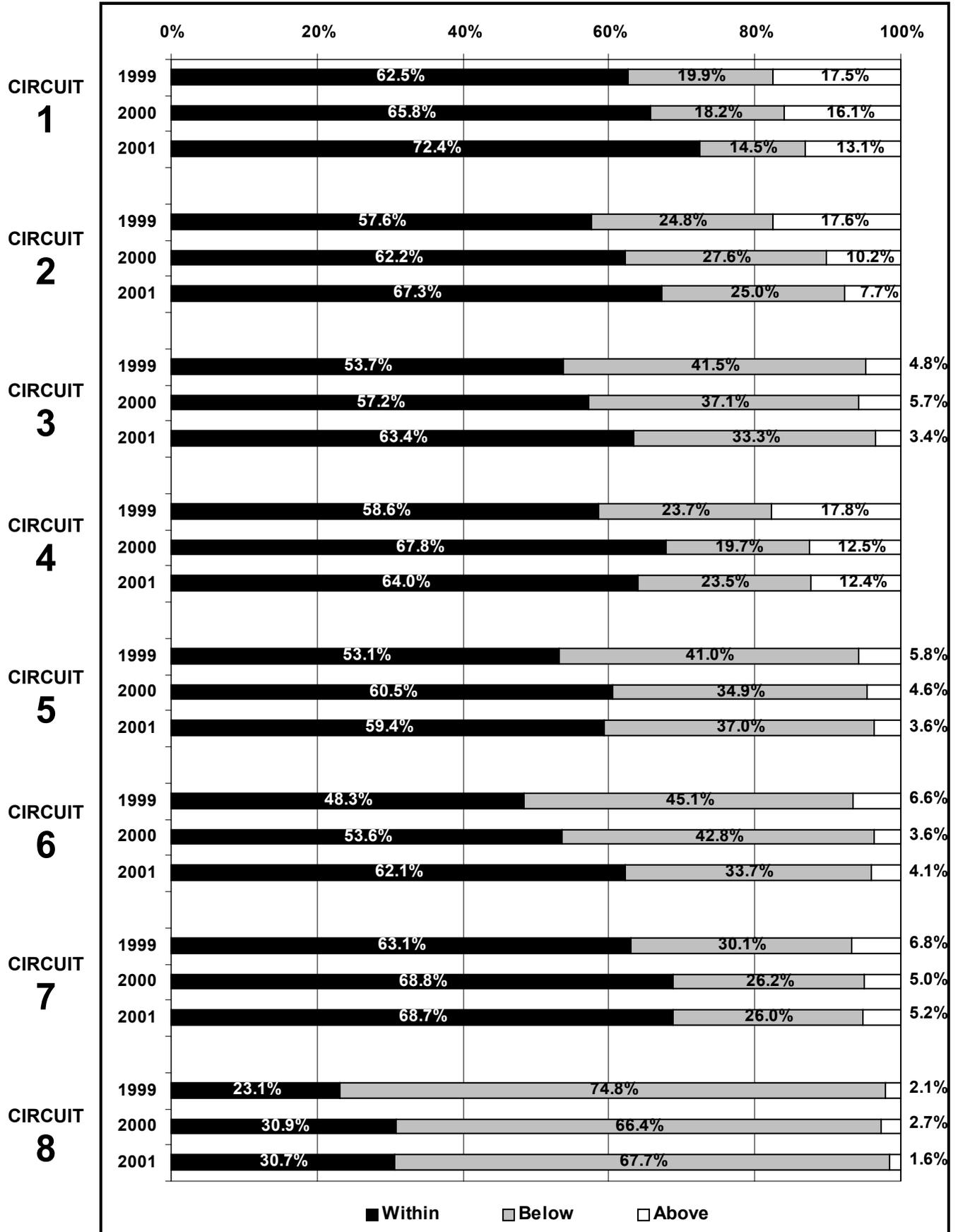
Figure 1. Sentencing Guidelines Departure by Year



As shown in Figure 2, while departure rates appeared to be relatively stable between calendar years 1999 and 2000 in four of the eight circuits, the Fourth, Fifth, Seventh, and Eighth Circuits exhibited fairly consistent downward trends. The aggregate departure rate in the Fourth Circuit, for example, decreased from 42% to 32% between 1999 and 2000. Similarly, the aggregate departure rate in the Eighth Circuit decreased from 77% to 69% during the same period of time.

From calendar year 2000 to 2001, departure rates remained relatively constant. The First, Second, Third, and Sixth Circuits had lower departure rates in 2001 than the previous year, while the Seventh and Eighth Circuits stayed almost the same, neither varying over two-tenths of a percentage from the previous year. Departure rates decreased most in the Sixth Circuit from 46% in 2000 to 38% in 2001.

Figure 2. Sentencing Guidelines Departures by Circuit and Year



MARYLAND JUDICIAL CIRCUITS	
First:	Dorchester, Somerset, Wicomico, and Worcester Counties
Second:	Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties
Third:	Baltimore and Harford Counties
Fourth:	Allegany, Garrett, and Washington Counties
Fifth:	Anne Arundel, Carroll, and Howard Counties
Sixth:	Frederick and Montgomery Counties
Seventh:	Calvert, Charles, Prince George's, and St. Mary's Counties
Eighth:	Baltimore City

Judicial Departure Rates by Crime Category

Figure 3 examines judicial departures by crime category. Generally speaking, departure rates were lowest for property offenses and highest for drug offenses. Between 1999 and 2001, the departure rate for drug offenses declined by 10% (68% to 58%), while the rate for person offenses declined slightly less than that (48% to 44%). The departure rates for both drug and person offenses remained virtually unchanged between 2000 and 2001. Property offenses, on the other hand, experienced relatively stable departure rates throughout the entire three-year period. Between 1999 and 2001, property offenses only experienced a 7% decrease in departure rate (61% to 68%).

Figure 3. Sentencing Guidelines Departures by Crime Category and Year

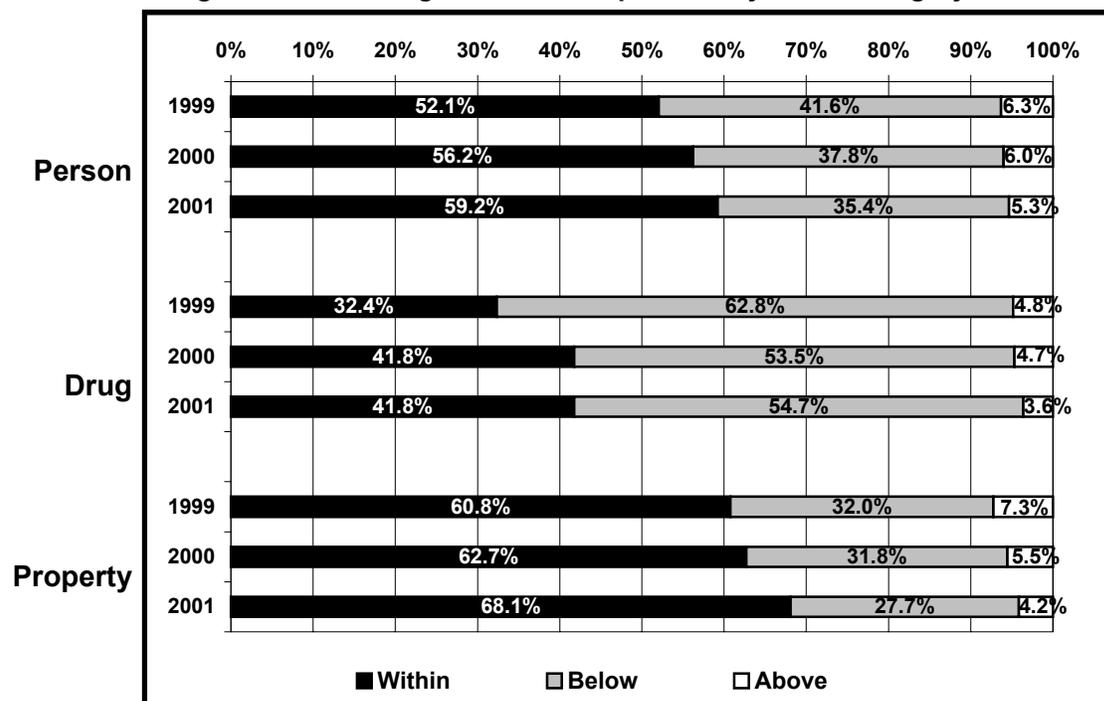


Figure 4 assesses departures within judicial circuits by crime category during the past three calendar years (1999-2001). The analysis revealed several seemingly distinct patterns of judicial departure among

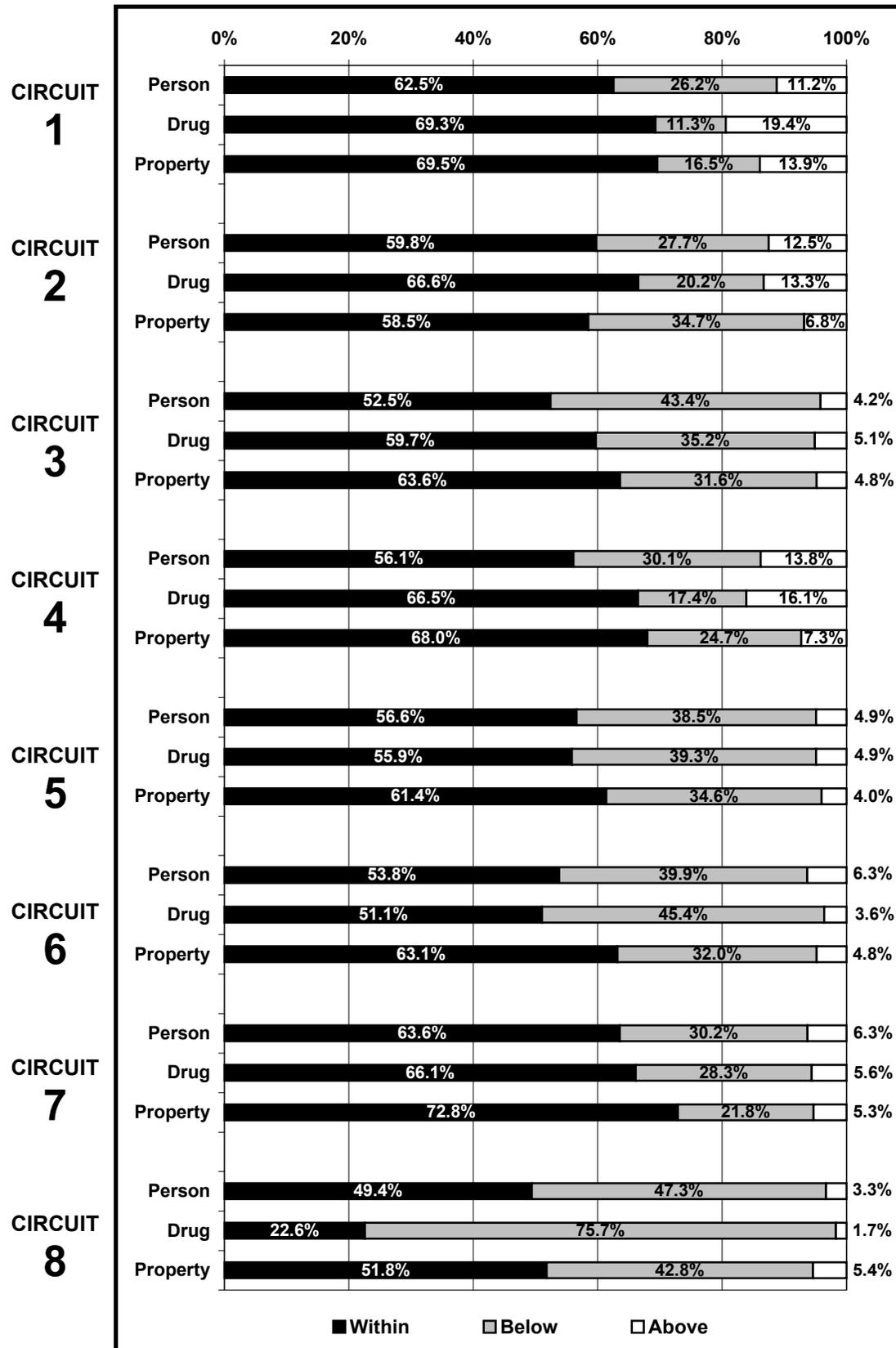
circuits. First, in seven of the eight circuits (the First, Second, Third, Fourth, Fifth, Sixth, and Seventh), departure rates for property offenses were significantly low (below 42%). The First, Fourth, and Seventh Circuits fell below a benchmark departure rate of 33% (31%, 32%, and 27%, respectively). The Eighth Circuit, whose departure rate was above 40%, was still relatively low (48%).

In addition, the departure rates in four circuits (the First, Second, Fourth, and Seventh) were fairly similar and relatively low for each crime category. For example, in the Seventh Circuit, the departure rate by crime category ranged from 27% for property offenses to 36% for person offenses. The aggregate departure rate across crime categories in these circuits fell below or narrowly passed 40%.

In three of the remaining four circuits (the Third, Fifth, and Sixth), the aggregate departure rate for each circuit fell between 37% and 49%. All three circuits had relatively stable departure rates for two of the three categories, with the third category falling slightly above or below the other two. In the Third Circuit, the person category contained the aberrant departure rate (nearly 10% less than the other two). For the other two circuits, the property category provided a noticeably higher rate than the other two.

Finally, the Eighth Circuit's aggregate departure rate was above the rates of the other seven circuits. In this circuit, the departure rate for drug offenses was especially high (77%). The high departure rate for drug offenses, coupled with the large number of drug offenses relative to person and property offenses, drove the Circuit's aggregate departure rate. While the aggregate departure rate in the Eighth Circuit was 59%, the departure rate for both person offenses and property offenses was moderately less (51% and 48%, respectively).

Figure 4. Sentencing Guidelines Departures by Crime Category and Circuit, 1999-2001



Judicial Departure Rates by Type of Disposition

Figure 5 provides a breakdown of case disposition types over the past three years. The vast majority of cases were resolved by a plea agreement (90%). Another 7% were resolved by a plea without agreement, and roughly 3% were resolved by either a bench or jury trial (2% and 1%, respectively).

Figure 5. Sentencing Guidelines Departures by Type of Disposition

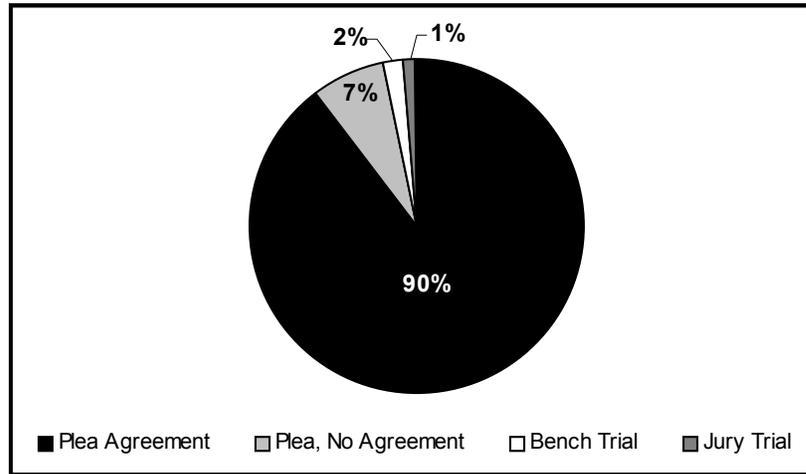
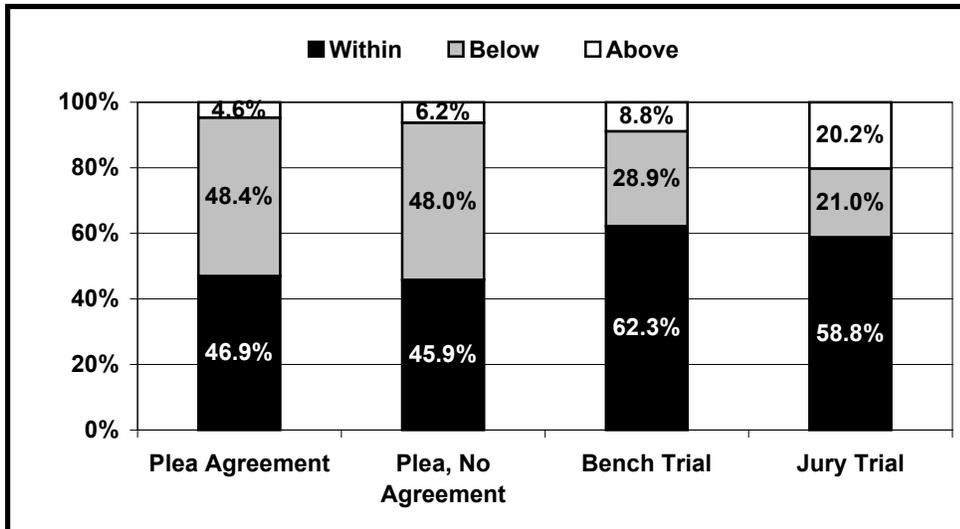


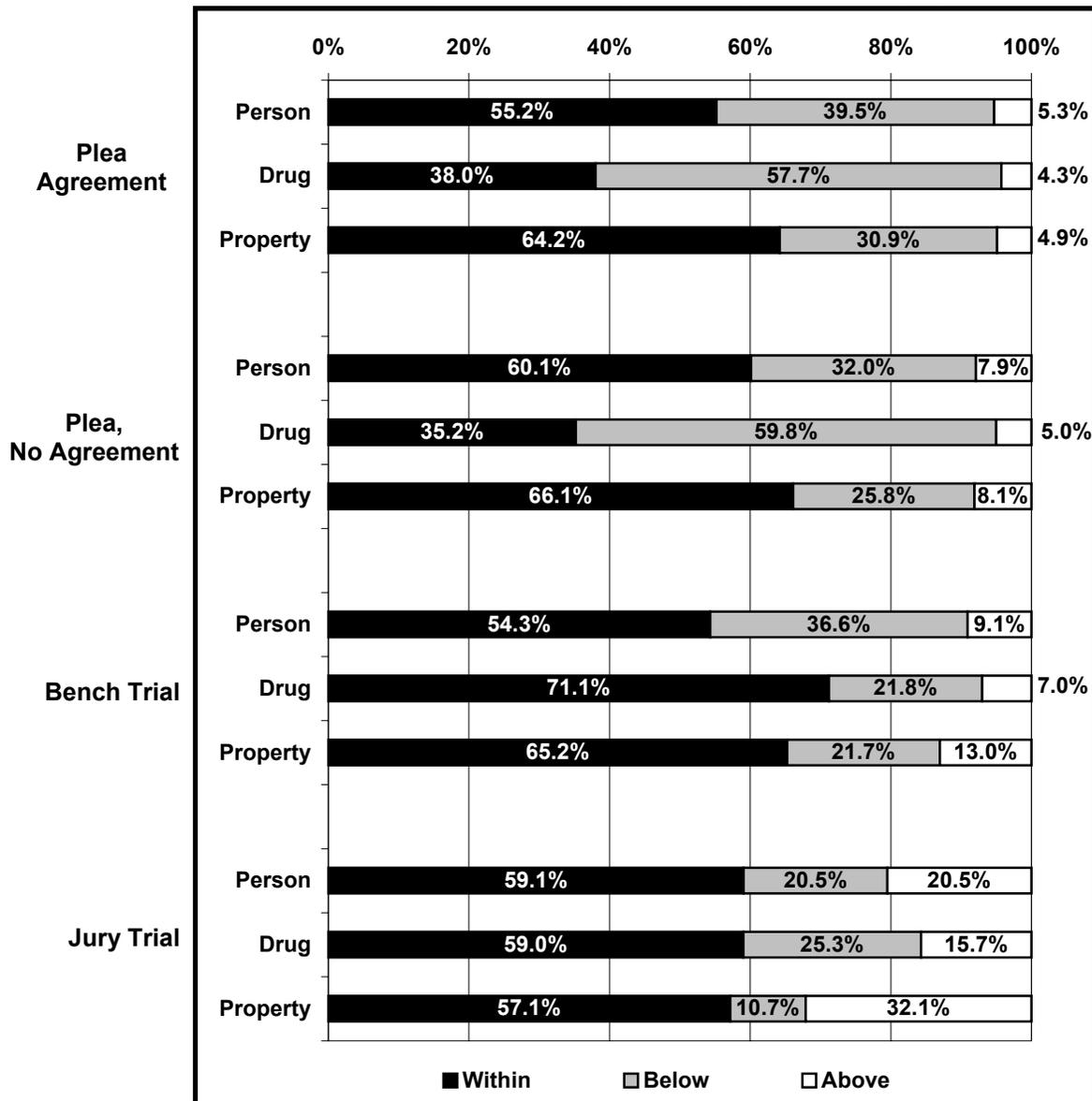
Figure 6 examines whether judicial departures varied by mode of disposition (i.e., plea agreement, plea without agreement, jury trial, and court trial) over the past three years. The lowest departure rates occurred in bench trials and jury trials, which were 38% and 41%, respectively. Notably, the departures for jury trials were broken down with 21% below the guidelines and 20% above the guidelines. Sentences decided by pleas, by both plea agreement and by plea without agreement, had similar departure rates. Dispositions of plea agreement had departure rate of 53% and dispositions of plea without agreement had a departure rate of 54%.

Figure 6. Sentencing Guidelines Departures by Type of Disposition



As shown in Figure 7, the general trend previously discussed carries over into individual crime categories as well. Both bench trials and jury trials had relatively low and stable departure rates across all three crime categories. With a two-point range between categories (41% person and drug, 43% property), jury trials had the most stable departure rates overall. The lowest departure rate across all three crime categories was found in bench trials involving drug cases (29%). Yet, this low rate did not carry over into other types of dispositions, particularly pleas. Drug cases disposed of by plea agreements and pleas without agreements had the two largest departure rates (62% and 65%, respectively). There were relatively few differences in departure rates for person and property offenses across all four types of case dispositions.

Figure 7. Sentencing Guidelines Departures by Crime Category and Circuit



Adjusted Judicial Departure Rates

In 2001, the SCCSP decided to include in its judicial departure rates two factors that needed consideration in reasonable discussions of departures from sentencing guidelines. First, the SCCSP agreed to count sentences that resulted from “ABA pleas,” that is, pleas binding on prosecution, defense, and the sentencing judge, as within guidelines to reflect the consensus of the parties and the communities that they represented. Second, recognizing the state’s interest in promoting sentences to correctional option programs (COPs), such as substance abuse treatment and other similar programs, even though those sentences might not fall within the sentencing guidelines, the SCCSP agreed to accept sentences to certain specified alternative sanctions (specified in COMAR) as within guidelines.

Table 1 examines adjusted judicial departure rates, taking into account cases disposed of by ABA plea agreements and/or sentenced to a corrections options program as defined in COMAR. As to be expected, the adjusted departure rates fell in all of the eight circuits. For the Second Circuit, the decrease was relatively small at 4% (30% to 26%). The Eighth Circuit, on the other hand, experienced a much larger decrease (66%). This significant drop was primarily attributed to the large number of drug cases disposed of by ABA pleas in that circuit. The second largest decrease was found in the Seventh Circuit (21%). The departure rates for the remaining five circuits decreased between 5% and 12%. Overall, the statewide departure rate fell by approximately 40%.

Table 1. Adjusted Departure Rates by Circuit

	CURRENT			ADJUSTED		
	<i>Within</i>	<i>ABA Pleas</i>	<i>COPS</i>	<i>Total Within</i>	<i>Below</i>	<i>Above</i>
Circuit 1	74.4%	8.7%	0.0%	83.1%	7.6%	9.4%
Circuit 2	70.4%	2.2%	1.5%	74.1%	20.0%	5.9%
Circuit 3	64.3%	10.8%	1.0%	76.1%	20.6%	3.2%
Circuit 4	58.6%	4.7%	0.0%	63.3%	23.4%	13.3%
Circuit 5	61.1%	4.3%	1.3%	66.7%	28.0%	5.3%
Circuit 6	65.3%	11.8%	0.0%	77.1%	20.7%	2.2%
Circuit 7	71.8%	20.9%	0.2%	92.9%	5.4%	1.7%
Circuit 8	28.3%	57.3%	8.7%	94.3%	5.4%	0.3%
TOTAL	47.0%	34.9%	4.8%	86.7%	10.9%	2.4%

Tables 2 through 4 provide a breakdown of the adjusted departure rates by offense type. The largest drop can be found in drug offenses (54%), followed by person offenses (19%), and, lastly, property offenses (14%). The overall departure rate for drug offenses was greatly influenced by the Eighth Circuit’s high rate of ABA plea agreements (61%). In general, the rate of ABA pleas for all eight circuits was higher in drug offenses (47%) than either person (18%) or property (12%). Both person and property offenses experienced relatively similar adjusted departure rates. The higher departure rate coupled with

the higher rate of ABA pleas ultimately brought the adjusted departure rate lower for person offenses than property offenses. It is important to note, in all eight circuits for all three types of offenses, cases were rarely sentenced to accepted corrections options programs, thus only minimally affecting the adjusted departure rates.

Table 2. Adjusted Departure Rates for Person Offenses by Circuit

	CURRENT			ADJUSTED		
	<i>Within</i>	<i>ABA Pleas</i>	<i>COPS</i>	<i>Within</i>	<i>Below</i>	<i>Above</i>
Circuit 1	67.9%	9.4%	0.0%	77.3%	11.3%	11.3%
Circuit 2	73.7%	2.6%	0.0%	76.3%	13.2%	10.5%
Circuit 3	61.8%	9.3%	0.9%	72.0%	23.6%	4.4%
Circuit 4	51.2%	2.3%	0.0%	53.5%	32.6%	14.0%
Circuit 5	64.7%	3.7%	1.5%	69.9%	25.7%	4.4%
Circuit 6	71.4%	10.7%	0.0%	82.1%	14.3%	3.6%
Circuit 7	72.0%	18.7%	0.0%	90.7%	6.7%	2.6%
Circuit 8	57.3%	39.0%	0.0%	96.3%	2.7%	0.9%
TOTAL	63.8%	18.3%	0.3%	82.4%	13.3%	4.2%

Table 3. Adjusted Departure Rates for Drug Offenses by Circuit

	CURRENT			ADJUSTED		
	<i>Within</i>	<i>ABA Pleas</i>	<i>COPS</i>	<i>Within</i>	<i>Below</i>	<i>Above</i>
Circuit 1	79.6%	8.8%	0.0%	88.4%	4.4%	7.3%
Circuit 2	73.6%	1.9%	1.9%	77.4%	17.0%	5.7%
Circuit 3	64.1%	15.5%	1.4%	81.0%	18.3%	0.7%
Circuit 4	57.4%	4.9%	0.0%	62.3%	19.7%	18.0%
Circuit 5	51.2%	7.3%	1.6%	60.1%	32.5%	7.3%
Circuit 6	55.7%	16.0%	0.0%	71.7%	27.5%	0.8%
Circuit 7	66.7%	25.2%	0.5%	92.4%	6.3%	1.4%
Circuit 8	22.0%	61.4%	10.4%	93.8%	6.1%	0.1%
TOTAL	35.1%	46.9%	7.4%	89.4%	9.3%	1.4%

Table 4. Adjusted Departure Rates for Property Offenses by Circuit

	CURRENT			ADJUSTED		
	<i>Within</i>	<i>ABA Pleas</i>	<i>COPS</i>	<i>Within</i>	<i>Below</i>	<i>Above</i>
Circuit 1	73.5%	5.9%	0.0%	79.4%	8.8%	11.8%

Circuit 2	63.6%	2.3%	2.3%	68.2%	29.5%	2.3%
Circuit 3	68.9%	8.3%	0.8%	78.0%	18.2%	3.8%
Circuit 4	75.0%	8.3%	0.0%	83.3%	16.7%	0.0%
Circuit 5	66.4%	2.2%	0.7%	69.3%	26.1%	4.5%
Circuit 6	78.6%	3.6%	0.0%	82.2%	14.3%	3.6%
Circuit 7	82.1%	16.0%	0.0%	98.1%	0.9%	0.9%
Circuit 8	53.9%	38.2%	4.9%	97.0%	1.0%	2.0%
TOTAL	69.1%	12.2%	1.3%	82.6%	14.1%	3.3%

Report on Adjustments from Reconsidered Sentences

In 2002, the Maryland General Assembly passed HB1143, which required the SCCSP to “review reductions or increases in original sentences” due to reconsideration of sentences in state circuit courts and to report those sentences in its Annual Report by offense type and circuit court. In anticipation of this legislation, the SCCSP had previously included an entry blank on its sentencing guidelines worksheet to note “reconsideration” and noted the requirement for all reconsidered sentences in its revisions to the Sentencing Guidelines Manual and accompanying explanatory material. The revised worksheet with the “reconsideration” entry went into effect on July 1, 2001. Table 5 indicates the submissions of explicitly noted reconsidered sentences received by the SCCSP for FY 2002.

Table 5. Case Reconsiderations

Circuit	Offense	Cases*
FOURTH	<i>Common Nuisance</i>	1
	<i>Possession of Cocaine</i>	1
FIFTH	<i>Possession of Marijuana</i>	1
SEVENTH**	<i>Assault, 2nd Degree</i>	3
	<i>Breaking & Entering</i>	2
	<i>Burglary, 2nd Degree</i>	2
	<i>CDS, Possession</i>	2
	<i>CDS, Distribution</i>	2
	<i>CDS, Distribution (Cocaine)</i>	1
	<i>Child Abuse</i>	1
	<i>First Degree Murder</i>	1
	<i>Kidnapping</i>	2
	<i>Resisting Arrest</i>	1
	<i>Robbery</i>	2
	<i>Robbery, Attempted</i>	1
	<i>Robbery, w/ Dangerous Weapon</i>	2
	<i>Sex Offense, 3rd Degree</i>	2

* Number of sentences that were adjusted

**The Seventh Circuit also submitted worksheets indicating reconsidered sentences that did not result in sentence adjustments, involving: Robbery (3), Second Degree Burglary (1), and Distribution of Heroin (1).

As this is the first year of implementing the data requirement, the SCCSP does not have baseline data with which to compare these submissions. The SCCSP is working closely with the state Administrative Office of the Courts (AOC) to ensure that all circuit court judges know to submit the worksheets for reconsidered sentences and to try to compare its data with AOC data. In addition, the SCCSP has coordinated with the Maryland Bar Association in its report with the law schools at the University of Maryland and the University of Baltimore on the factors leading to reconsidered sentences. The SCCSP expects to refine its reporting process in the coming year to provide the most thorough portrait possible of the use of reconsidered sentences in the state circuit courts.

Summary

Judicial departure rates within the Maryland sentencing guidelines have been tracked for almost 15 years. A study by the MCCSP over a 10-year period revealed that the aggregate departure rate across crime categories (45%) fell beyond 33%, a benchmark set by the MCCSP and adopted by the SCCSP. Departure rates were lowest for property offenses, followed by person offenses, and then drug offenses. When judges departed from the recommended sentencing guidelines range (regardless of crime category), they generally sentenced below the recommended range.

The current analysis revealed that, in the past three years, with greater SCCSP effort at improving them, departure rates have declined 9%. Although aggregate rates of judicial departures remain above a benchmark of 33%, the aggregate rate declined from 58% to 51% between 1999 and 2000, and then again from 51% to 49% between 2000 and 2001.

Comparison of judicial departure rates by mode of disposition (plea agreement, plea without agreement, jury trial, or court trial) revealed that sentences imposed as a result of a plea agreement or plea without agreement were more likely to fall below the recommended sentencing guidelines range (although this was not true for property offenses). Upward departures were most common among cases resolved by a jury trial.

Between 1999 and 2000, all judicial circuits experienced a decrease in departure rates. The rates in five of the eight circuits (Fourth, Fifth, Sixth, Seventh, and Eighth) fell more than 5%. The Fourth Circuit experienced a departure rate nearly twice that amount (9%). The remaining three circuits (First, Second, and Third), however, exhibited a less significant downward trend. The departure rates in the First and Third Circuits decreased by approximately 3%, while the Second Circuit experienced a 4% decrease.

This overall downward trend continued through 2001, despite the fact that some circuits experienced no rate changes and the rates of others actually increased. Between 2000 and 2001, neither the Seventh nor Eighth Circuits experienced any change in departure rates. During this same time period, the Fourth and Fifth Circuits actually experienced an increase in departure rates. The increase was fairly small for the Fifth Circuit (1%), but more moderate for the Fourth Circuit (4%). Yet, these relatively minor increases were not significant enough to affect the overall departure rates.

The most aberrant departure rate can be found in Eighth Circuit drug cases (77%). Departure rates in this category of offenses remain significantly higher than all other cases. In the Eighth Circuit, the very high departure rate for drug offenses in combination with the large number of drug offenses relative to person and property offenses strongly influenced its aggregate compliance rate. The exploratory analysis of compliance for drug offenses from 1999 through 2001 suggests that the high departure rate stems primarily from the high departure rate for cocaine and heroin distribution cases (Seriousness Category III – Without Importation). If these two offenses were excluded from the departure calculation, the statewide departure rate for all remaining drug offenses would have decreased by 32% (65%-33%). Similarly, if these two offenses were excluded from the statewide departure rate for all offenses, the overall rate would have decreased by 19% (53%-34%) for the 1999-2001 period.

The present analyses suggest that the aggregate departure rates have begun a downward trend over the past three years. Trends in aggregate departure rates, however, obscure variation at the circuit level, as evidenced by the range in departure rate percentages. The high aggregate judicial departure rate for drug offenses was strongly influenced by the high departure rate for two offenses, which occurred predominantly in one circuit.

SCCSP PLANNED ACTIVITIES FOR 2003

While the work of the SCCSP is frequently driven by pressing policy issues and concerns that develop on short timeframes, the SCCSP does have several items on its action agenda for 2003. As mentioned, the Sentencing Guidelines Subcommittee will examine possible adjustments to the sentence ranges in the cell of each guidelines matrix, as well as considering inclusion of correctional options into the matrices. Criminal offenses and changes in the criminal code made by the General Assembly in 2003 will be incorporated into the guidelines and submitted to COMAR. The SCCSP will report data on the new items added to the sentencing guidelines worksheet, such as additional victim information and data on reporting of time to be served before parole consideration for violent offenses. New reports on sentencing-related issues and concerns will go up on the SCCSP web site on a regular basis for use by the public and state policymakers, including more "Sentencing FAX" reports and reports on the future effect of technological change on sentencing practices in Maryland and across the nation. The SCCSP will continue its use of DFGs, perhaps moving into other topic areas such as public priorities for the state sentencing policy agenda. SCCSP staff will further develop its training exercises and materials to ease and promote the use of the guidelines in all circuit courts and oversee implementation of the worksheet process on-line, as previously discussed.

CONCLUSION

In 2002, the SCCSP continued classification of criminal offenses passed by the 2002 Maryland General Assembly; began reporting of new data on reconsidered sentences, types of pleas, and victims' involvement in sentencing; considered legislation concerning diminution credits; provided data and information to state agencies and media, including the Baltimore City Criminal Justice Coordinating

Council and several of its component agencies; performed training sessions across the state for users of the guideline manuals and worksheets; completed a training video for guidelines use and began development of online applications of the process; continued use of its advisory worksheet workgroup composed of practitioners from around the state; piloted of “deliberative focus groups” on correctional options and disseminated a report on their findings and recommendations; worked with the state Family Violence Council on better data collection on felony domestic violence offenses; and posted research reports on topics related to sentencing and to criminal justice to provide a resource for state policymakers desiring thorough information for their decisions. In 2002, the SCCSP also revised its web site (www.msccsp.org) to make it more thorough and user-friendly and to allow citizens and policymakers to have better access to information concerning Maryland circuit court sentencing.

The SCCSP continued its recording and reporting of data on state circuit court sentencing. The analysis in this report revealed that, although aggregate rates of judicial departures remain above a benchmark of 33%, the aggregate rate declined from 58% to 51% between 1999 and 2000, and then again from 51% to 49% between 2000 and 2001. The decline marks successful SCCSP efforts to improve departure rates since its inception. Between 1999 and 2000, all judicial circuits experienced a decrease in departure rates. This overall downward trend continued through 2001, despite the fact that some circuits experienced no rate changes and the rates of others actually increased. In the Eighth Circuit, a very high departure rate for drug offenses in combination with the large number of drug offenses relative to person and property offenses strongly influenced its aggregate compliance rate. The exploratory analysis of compliance for drug offenses from 1999 through 2001 suggests that the high departure rate stems primarily from the high departure rate for cocaine and heroin distribution cases (Seriousness Category III – Without Importation). If these two offenses were excluded from the departure calculation, the statewide departure rate for all remaining drug offenses would have decreased by 32% (65%-33%). Similarly, if these two offenses were excluded from the statewide departure rate for all offenses, the overall rate would have decreased by 19% (53%-34%) for the 1999-2001 period.

Comparison of judicial departure rates by mode of disposition (plea agreement, plea without agreement, jury trial, or court trial) revealed that sentences imposed as a result of a plea agreement or plea without agreement were more likely to fall below the recommended sentencing guidelines range (although this was not true for property offenses). Upward departures were most common among cases resolved by a jury trial.

In 2001, the SCCSP decided to include in its judicial departure rates two factors that needed consideration in reasonable discussions of departures from sentencing guidelines. First, the SCCSP agreed to count sentences that resulted from “ABA pleas,” that is, pleas binding on prosecution, defense, and the sentencing judge, as within guidelines to reflect the consensus of the parties and the communities that they represented. Second, recognizing the state’s interest in promoting sentences to correctional options, such as substance abuse treatment and other similar programs, even though those sentences might not fall within the sentencing guidelines, the SCCSP agreed to accept sentences to certain specified alternative sanctions (specified in COMAR) as within guidelines.

As to be expected, the adjusted departure rates fell in all of the eight circuits. For the Second Circuit, the decrease was relatively small at 4% (30% to 26%). The Eighth Circuit, on the other hand, experienced, a much larger decrease (66%). This significant drop is primarily attributed to the large number of drug cases disposed of by ABA pleas in that circuit. The second largest decrease can be found in the Seventh Circuit (21%). The departure rates for the remaining five circuits decreased between 5% and 12%. Overall, the statewide departure rate fell by approximately 40%.

In 2002, the Maryland General Assembly passed HB1143, which required the State Commission on Criminal Sentencing Policy (SCCSP) to “review reductions or increases in original sentences” due to reconsideration of sentences in state circuit courts and to report those sentences in its Annual Report by offense type and circuit court. As this is the first year of implementing the data requirement, the SCCSP does not have baseline data with which to compare these submissions. The SCCSP is working closely with the state Administrative Office of the Courts (AOC) to ensure that all circuit court judges know to submit the worksheets for reconsidered sentences and to try to compare its data with AOC data. In addition, the SCCSP has coordinated with the Maryland Bar Association in its report with the law schools at the University of Maryland and the University of Baltimore on the factors leading to reconsidered sentences. The SCCSP expects to refine its reporting process in the coming year to provide the most thorough portrait possible of the use of reconsidered sentences in the state circuit courts.

In 2003, the SCCSP will continue its review of the state sentencing guidelines and make necessary changes to ensure their consistency and coherence. It will maintain its training and information activities and its work with Maryland circuit courts to decrease rates of departure from the voluntary guidelines. The SCCSP will work diligently to fulfill its legislatively mandated mission of bringing proportional, nondisparate sentencing to the state criminal justice process and to the people of Maryland.