

**STATE COMMISSION**  
**ON**  
**CRIMINAL SENTENCING POLICY**



**ANNUAL REPORT**

**December 1999**

**Maryland**  
**State Commission on Criminal Sentencing Policy**

**Annual Report 1999**

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## **Executive Summary**

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 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 SCCSP was also authorized to “adopt guidelines to identify defendants who would be appropriate for participation in corrections options programs.”

Furthermore, the SCCSP was empowered 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 was 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 was authorized 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.

For the coming year the SCCSP will pursue the following activities:

- the transition of the existing sentencing guidelines into the Code of Maryland Regulations (COMAR)
- adoption of drug matrix revisions proposed by the Maryland Sentencing Guidelines Advisory Board of the state Judicial Conference
- possible revision of severity levels and sentencing ranges for offenses in the existing guidelines
- incorporation of correctional options in conjunction with the proposals of the Corrections Options Subcommittee
- statewide expansion of corrections options through state/local partnerships and development of a Corrections Options Authority
- extending availability of corrections options to state district courts.
- study of the state's diminution/good time credits process in its parole system with the intent of recommending revisions, if necessary
- review and reporting of rates of judicial compliance with the existing guidelines
- policy statement on compliance to be provided all judges and other system participants in guidelines training and orientation sessions and in SCCSP guidelines materials
- effective guidelines training and orientation processes and materials
- study of the reasons for noncompliance with sentencing guidelines

The State Commission on Criminal Sentencing Policy has a mandate to ensure that Maryland sentencing policy is fair, clear, appropriate, and effective within the framework of voluntary guidelines permitting sufficient judicial discretion to give individual cases their proper consideration. The organization and tasks of the SCCSP outlined above guarantee that a productive and constructive agenda for action based on those goals will be pursued in the coming year and in the years to come.

# **Maryland State Commission on Criminal Sentencing Policy**

## **Annual Report for 1999**

### **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.

**Organizational Structure and Support**

The SCCSP is currently 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.

**Members appointed by the Governor:**

<b>Chair</b>	Honorable Andrew L. Sonner	Montgomery County
<b>State's Attorney</b>	Honorable Marna McLendon	Howard County
<b>Criminal Defense Attorney</b>	Domenic R. Iamele, Esquire	Howard County
<b>Victims' Advocacy Group</b>	Russell P. Butler, Esquire	Prince George's County
<b>Law Enforcement</b>	Colonel David B. Mitchell	Prince George's County
<b>Criminal Justice or Corrections Policy Expert</b>	Charles F. Wellford, Ph.D.	Anne Arundel County
<b>Local Detention Center</b>	Barry L. Stanton	Prince George's County
<b>Public</b>	Gail M. Lankford	Somerset County
<b>Public</b>	Arthur A. "Bud" Marshall, Jr. Esquire	Prince George's County

**Members appointed by the Chief Judge of the Court of Appeals of Maryland:**

<b>Court of Appeals</b>	Honorable Howard S. Chasanow	Prince George's County
<b>Circuit Court</b>	Honorable John C. Themelis	Baltimore City
<b>District Court</b>	Honorable Timothy J. Doory	Baltimore City

**Members appointed by the President of the Senate:**

<b>Senator</b>	Honorable Delores G. Kelley	Baltimore City and County
<b>Senator</b>	Honorable Norman R. Stone	Baltimore County

**Members appointed by the Speaker of the House:**

<b>Delegate</b>	Honorable Kenneth C. Montague	Baltimore City
<b>Delegate</b>	Honorable Joseph F. Vallario, Jr.	Prince George's County

**Ex-Officio Members:**

<b>Attorney General</b>	J. Joseph Curran, Jr.	
<b>State Public Defender</b>	Stephen E. Harris	
<b>Secretary of Public Safety &amp; Correctional Services</b>	Stuart O. Simms	

Two full-time staff members assisted the Commissions in 1999. Kim S. Hunt, Ph.D. was the Executive Director of the MCCSP and then of the SCCSP. Dr. Hunt left in May, 1999, and was replaced by Michael Connelly, Ph.D., in November, 1999. Prior to joining the State Commission, Dr. Connelly was Director of Special Projects for the Justice Research and Statistics Association in Washington, D. C. He had also previously served as the Director of Research for the Oklahoma Criminal Justice Resource Center, which included staffing the Oklahoma Sentencing Commission. Claire Souryal, Ph.D. was the Research Director of the MCCSP and continued in the position with the SCCSP.

The SCCSP and the MCCSP received staff support in 1999 from the Administrator of the Circuit Court for Montgomery County, the Office of the Lieutenant

Governor, the Governor's Office of Crime Control & Prevention, the Department of Public Safety and Correctional Services Office of Research and Statistics, the Administrative Office of the Courts, and the University of Maryland Justice Analysis Center. Both commissions also received substantial cooperation from representatives of various local governments, as well as several state agencies. The SCCSP maintains a web site to provide public access to information regarding its work. (The web site is located at [www.gov.state.us.md/sentencing/](http://www.gov.state.us.md/sentencing/) and contains the minutes of all sentencing commission meetings and other useful information.)

### **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.

### **Judicial Compliance with the Voluntary Guidelines**

*Overview.* The system of voluntary/advisory guidelines for circuit courts is the centerpiece of sentencing reform in Maryland. The guidelines have been in place statewide since 1983. The concept of judicial sentencing guidelines was introduced in

the late 1970s by the judiciary in response to judicial perceptions of unwarranted sentencing disparity.<sup>2</sup>

The voluntary sentencing guidelines are displayed in three separate matrices, one for person offenses, one for property offenses, and one for drug offenses. The sentence recommendation is determined by the intersection of a defendant's criminal history score and offense seriousness score on each two-variable matrix. Recommended sentence ranges are wide, sometimes encompassing a range of 10 or more years. The average width of the recommended ranges on the person matrix, for example, is 8.85 years. The average width of the range for property offenses is 4.05 years and the average width for drug offenses is 2.22 years.<sup>3</sup>

The guidelines were originally drafted with the expectation that two-thirds of the sentences would fall within the recommended sentencing ranges. It was recognized at the outset that as sentencing practices changed, the sentencing guidelines would change. That is, whenever actual sentences disagreed with the guideline sentence recommendations in more than 33% of the cases, the guidelines were to be revised.<sup>4</sup>

The sentencing guidelines manual instructs judges to sentence within the recommended guideline range, absent "compelling" circumstances to depart. If judges choose to depart from the sentencing guidelines, the sentencing guidelines manual

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<sup>2</sup> Levin, M.A. (1984). *Maryland's Sentencing Guidelines - A System By and For Judges*. *Judicature*, 68 (4-5):174.

<sup>3</sup> Griffin, E.K. (1994). An Evaluation of Maryland's Sentencing Guidelines: Have They Reduced Disparity in Sentencing. Thesis (M.A.) College Park, Maryland: University of Maryland, p.71.

<sup>4</sup> Attempts to revise the guidelines in 1993, however, met strong opposition from the public and the proposed revisions were suspended. The existing sentencing guidelines have not been revised since 1987, except to clarify offenses.

requires a written reason for departure, indicating “specifically why the sentence actually imposed is more appropriate, reasonable, or equitable than a sentence within the guidelines.” In practice, however, the judiciary has generally neglected to provide a meaningful, written explanation for departure. In approximately 75% of the departure sentences over a ten-year period, the departure reason had not been documented.

MCCSP Examination of Judicial Compliance: 1987-1996. The MCCSP examined judicial compliance to the guidelines statewide and by crime category. The MCCSP examination revealed low levels of judicial compliance. Although the judicial board responsible for guidelines development expected a compliance rate of approximately two-thirds or 67%, the average compliance rate between 1987 and September, 1996 was 55%.<sup>5</sup> As shown in Table 1, judges were most likely to comply with the guidelines for property offenses and least likely to comply with the guidelines for drug offenses. Regardless of crime category, however, when judges departed from the guidelines they usually sentenced *below* the recommended range. The percentage of cases where judges exceeded the recommended range is relatively constant across crime categories (roughly 8%). Low compliance rates are particularly notable given the wide range of many of the matrix cells.

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<sup>5</sup> The sample consists of N=80,607 individuals convicted of single counts in Maryland circuit courts between January, 1987 and September, 1996 (and for whom a sentencing guidelines worksheet was completed). Note that the crime category was missing for one individual.

**Table 1. MCCSP Examination of Judicial Compliance—Judicial Compliance with the Voluntary Sentencing Guidelines between January, 1987 and September, 1996 among Single Count Convictions.**

	Within Guidelines	Below Guidelines	Above Guidelines
All Offenses	44,048 (54.6%)	30,283 (37.6%)	6,276 (7.8%)
Person Offenses	12,694 (57.2%)	7,748 (34.9%)	1,741 (7.8%)
Drug Offenses	20,666 (49.2%)	18,132 (43.2%)	3,171 (7.6%)
Property Offenses	10,687 (65.0%)	4,403 (26.8%)	1,364 (8.3%)

SCCSP Examination of Judicial Compliance: 1997-1999. The enabling legislation of the SCCSP requires an annual report to the General Assembly. As part of the annual report, the SCCSP is expected to “review judicial compliance with the guidelines, including compliance by offense and by judicial circuit.” The SCCSP examination of judicial compliance presented here will extend the MCCSP study by assessing judicial compliance between January, 1997 and November, 1999 and by examining judicial compliance by crime category and by geographical circuit.<sup>6</sup>

<sup>6</sup> Individuals convicted of a single count in circuit court during calendar years 1997 through November, 1999 were included in the analysis. Inclusion in the analysis was also dependent on whether a sentencing guidelines worksheet was completed and forwarded to the Administrative Office of the Courts. The Administrative Office of the Courts tracks sentencing guidelines “eligible” cases and attempts to ensure that all such cases are compiled in a sentencing guidelines database. Note that the number of defendants sentenced and included in the database during 1998 is roughly one-third of the number of defendants sentenced and included in the database during 1997. Defendants sentenced during 1998 and included in the database may not therefore be representative of the total population of sentenced offenders in 1998. Note, however, that a comparison of the characteristics of defendants and sentencing jurisdictions during each calendar year revealed similar trends over time.

Between January, 1997 and November, 1999 the average judicial compliance rate across person, drug, and property offenses was 45% (see Table 2). This aggregate rate falls well below the target compliance level of 66.7% and represents a decrease of approximately 10% from the aggregate compliance rate reported between 1987-1996. Disaggregated by crime category, the decline in judicial compliance rates was most evident among drug offenses (12.2% decrease) and person offenses (8.6% decrease).<sup>7</sup>

**Table 2. SCCSP Examination of Judicial Compliance—Judicial Compliance with the Voluntary Sentencing Guidelines between January, 1997 and November, 1999 among Single Count Convictions Statewide.**

	Within Guidelines	Below Guidelines	Above Guidelines
All Offenses	8,219 (44.7%)	8,974 (48.8)	1,212 (6.6%)
Person Offenses	2,611 (48.6%)	2,398 (44.7%)	361 (6.7%)
Drug Offenses	3,661 (37.0%)	5,657 (57.1%)	584 (5.9%)
Property Offenses	1,946 (62.2%)	916 (29.3%)	267 (8.5%)

Judicial compliance varied distinctly by crime category. For example, 62% of the property offense sentences fell within the sentencing guidelines range statewide, while only 37% of drug offense sentences fell within the recommended range. The compliance rate for person offenses was 49%.

<sup>7</sup> Note that the crime category was missing for four defendants.

Judicial compliance by circuit is shown in Table 3.<sup>8</sup> In six of the eight circuits, compliance rates clustered between 50% and 60%. The First Circuit slightly exceeded the range with an average compliance rate of 64% and the Eighth Circuit fell far below the range with an average compliance rate of 27%.

**Table 3. SCCSP Examination—Judicial Compliance with the Voluntary Sentencing Guidelines by Circuit between January, 1997 and November, 1999 among Single Count Convictions.**

	Within Guidelines	Below Guidelines	Above Guidelines
<b>First Circuit:</b>			
<b>All Offenses</b>	<b>714 (64.4%)</b>	<b>200 (18.0%)</b>	<b>195 (17.6%)</b>
Person Offenses	217 (58.2%)	122 (32.7%)	34 (9.1%)
Drug Offenses	346 (67.3%)	53 (10.3%)	115 (22.4%)
Property Offenses	151 (68.0%)	25 (11.3%)	46 (20.7%)
<b>Second Circuit:</b>			
<b>All Offenses</b>	<b>287 (60.0%)</b>	<b>107 (22.4%)</b>	<b>84 (17.6%)</b>
Person Offenses	67 (55.8%)	36 (30.0%)	17 (14.2%)
Drug Offenses	144 (59.0%)	45 (18.4%)	55 (22.5%)
Property Offenses	76 (66.7%)	26 (22.8%)	12 (10.5%)
<b>Third Circuit:</b>			
<b>All Offenses</b>	<b>1,410 (51.0%)</b>	<b>1,207 (43.6%)</b>	<b>150 (5.4%)</b>
Person Offenses	499 (44.3%)	573 (50.9%)	54 (4.8%)
Drug Offenses	452 (53.2%)	349 (41.1%)	48 (5.7%)
Property Offenses	458 (58.0%)	283 (35.9%)	48 (6.1%)
<b>Fourth Circuit:</b>			
<b>All Offenses</b>	<b>453 (55.9%)</b>	<b>218 (26.9%)</b>	<b>140 (17.3%)</b>
Person Offenses	113 (51.8%)	72 (33.0%)	33 (15.1%)
Drug Offenses	275 (56.6%)	121 (24.9%)	90 (18.5%)
Property Offenses	65 (60.7%)	25 (23.4%)	17 (15.9%)
<b>Fifth Circuit:</b>			
<b>All Offenses</b>	<b>822 (50.6%)</b>	<b>715 (44.0%)</b>	<b>88 (5.4%)</b>
Person Offenses	245 (45.4%)	260 (48.1%)	35 (6.5%)
Drug Offenses	320 (50.4%)	283 (44.6%)	32 (5.0%)
Property Offenses	257 (57.1%)	172 (38.2%)	21 (4.7%)

<sup>8</sup> First Circuit: Dorchester, Somerset, Wicomico, Worcester Counties  
 Second Circuit: Caroline, Cecil, Kent, Queen Anne's, Talbot Counties  
 Third Circuit: Baltimore, Harford Counties  
 Fourth Circuit: Allegany, Garrett, Washington Counties  
 Fifth Circuit: Anne Arundel, Carroll, Howard Counties  
 Sixth Circuit: Frederick, Montgomery Counties  
 Seventh Circuit: Calvert, Charles, Prince George's, St. Mary's Counties  
 Eighth Circuit: Baltimore City

	Within Guidelines	Below Guidelines	Above Guidelines
<b>Sixth Circuit:</b>			
<b>All Offenses</b>	<b>619 (50.9%)</b>	<b>520 (42.7%)</b>	<b>78 (6.4%)</b>
Person Offenses	212 (52.0%)	162 (39.7%)	34 (8.3%)
Drug Offenses	253 (45.5%)	277 (49.8%)	26 (4.7%)
Property Offenses	154 (60.9%)	81 (32.0%)	18 (7.1%)
<b>Seventh Circuit:</b>			
<b>All Offenses</b>	<b>2,019 (60.0%)</b>	<b>1,042 (31.0%)</b>	<b>305 (9.1%)</b>
Person Offenses	580 (53.3%)	406 (37.3%)	102 (9.4%)
Drug Offenses	951 (60.0%)	506 (31.9%)	129 (8.1%)
Property Offenses	488 (70.6%)	129 (18.7%)	74 (10.7%)
<b>Eighth Circuit:</b>			
<b>All Offenses</b>	<b>1,895 (26.9%)</b>	<b>4,965 (70.6%)</b>	<b>172 (2.4%)</b>
Person Offenses	678 (45.3%)	767 (51.2%)	52 (3.5%)
Drug Offenses	920 (18.3%)	4,023 (79.9%)	89 (1.8%)
Property Offenses	297 (59.0%)	175 (34.8%)	31 (6.2%)

In every circuit, judges were most likely to comply with the guidelines for property offenses (ranging from 57% to 71%). In six circuits, judges were least likely to comply with the guidelines for person offenses. Across all circuits, compliance with the person offense matrix ranged from 44% to 58%.

Compliance rates for drug offenses varied the most among circuits. *Excluding* the Eighth Circuit, compliance with the drug matrix ranged from 46% to 67%. In the Eighth Circuit (Baltimore City), only 18% of the drug sentences were consistent with the guidelines. The vast majority of departures (80%) from the recommended sentence for drug offenses in the Eighth Circuit fell below the recommended range. Since the majority of guidelines offenses in the Eighth Circuit were drug offenses (71%), the low compliance rates for drug offenses drove the low aggregate compliance rate in the Eighth Circuit.

Generally speaking, when judges within each circuit departed from the guidelines, they were substantially more likely to sentence *below* the recommended range. The First Circuit was the exception to the rule, however. When judges in the First Circuit depart

from the drug and property matrixes, they were more likely to sentence *above* the recommended range. Similarly, in the Second Circuit, judges were more likely to sentence above the recommended range for a drug offense.

Summary. Examination of aggregate judicial compliance rates suggests that judicial compliance with the sentencing guidelines is very low. The average judicial compliance across crime categories between 1997 and November, 1999 for example was 45% (10% lower than judicial compliance rate between 1987-1996). This rate clearly falls well below the target rate of 66.7%.

The aggregate compliance rate, however, obscures substantial variation by crime category. Judicial compliance with the property matrix, for example, averaged 62% whereas judicial compliance with the drug matrix averaged 37%. Since over 50% of the sentencing guidelines offenses statewide were drug offenses, the compliance rate for drug offenses significantly influenced the aggregate compliance rate. And in turn, since approximately 51% of the drug offenses statewide occur in the Eighth Circuit, the very low compliance rate for drug offenses in the Eighth Circuit significantly influenced the statewide compliance rate for drug offenses.

While a decrease in judicial compliance with the drug matrix (particularly in the Eighth Circuit) likely explains some of the aggregate downward shift in compliance rates since the SCCSP study (1987-1996), it is only partial explanation since compliance with person offense matrix has decreased as well.

Examination of compliance by circuit supports the SCCSP conclusion that geographical sentencing disparity may exist in Maryland. Geographical sentencing disparity refers to sentencing disparity at the court, county, or city level. Courts located

in rural jurisdictions, for example, may adopt more punitive sentencing practices than courts located in urban jurisdictions. Informal sentencing practices (e.g., the “going rate”) spring from differences in local crime rates and court volume as well as from local culture and values.

As mandated by the General Assembly, the SCCSP will continue to monitor judicial compliance rates and encourage judicial compliance. The SCCSP is currently developing an aggravating and mitigating factor checklist to be completed by judges at the time of sentencing. The departure checklist is expected to facilitate the systematic collection of departure data and encourage judges to provide departure reasons. The SCCSP is additionally planning to conduct a detailed study of the factors that drive judicial noncompliance. The importance of compliance with the sentencing guidelines will also be stressed during judicial training and orientation and will be the focus of a Commission policy statement.

#### **SCCSP Action Plan for 2000**

The SCCSP currently has organized three subcommittees to recommend to the full commission action on selected priorities through the year 2000. The Sentencing Guidelines Subcommittee will prepare and propose for **appropriate review and authorization the transition of the existing sentencing guidelines into the Code of Maryland Regulations (COMAR)**. In addition to readying the existing guidelines, the subcommittee will **incorporate offenses created by the General Assembly, which have not yet been classified, into the guidelines and COMAR**. The Sentencing Guidelines Subcommittee will also consider the **adoption of drug matrix revisions proposed by**

**the Maryland Sentencing Guidelines Advisory Board of the state Judicial Conference. Further, the subcommittee will examine possible revision of severity levels and sentencing ranges for offenses in the existing guidelines. Included in this latter task will be incorporation of correctional options in conjunction with the proposals of the Corrections Options Subcommittee.**

**The Corrections Options Subcommittee will design and propose statewide expansion of corrections options through state/local partnerships and development of a Corrections Options Authority. It will also consider appropriate means of extending availability of corrections options to state district courts. Additionally, it will oversee a proposed study of the state's diminution/good time credits process in its parole system with the intent of recommending revisions, if necessary.**

**The Compliance Subcommittee will continue SCCSP review and reporting of rates of judicial compliance with the existing guidelines. To ensure clear understanding of the importance of compliance in the state, the subcommittee will develop a policy statement on compliance to be provided all judges and other system participants in guidelines training and orientation sessions and in SCCSP guidelines materials. It will also assist SCCSP staff in designing effective guidelines training and orientation processes and materials. Further, the Compliance Subcommittee will help to design and implement a study of the reasons for noncompliance with sentencing guidelines.**

**The recommendations of these subcommittees will constitute most of the agenda for the full SCCSP over the next year. SCCSP action will be passed on to appropriate state policymakers in the form of proposed legislation, regulations, or recommendations**

for action. In addition, the SCCSP and its staff will maintain a **repository of reports and research on sentencing and related policy which will be available for reference by policymakers on request.** The SCCSP and its staff may periodically **produce reports and arrange meetings to bring contemporary research and analysis to public deliberation on sentencing policy.**

### **Conclusion**

The State Commission on Criminal Sentencing Policy has a mandate to ensure that Maryland sentencing policy is fair, clear, appropriate, and effective within the framework of voluntary guidelines permitting sufficient judicial discretion to give individual cases their proper consideration. The organization and tasks of the SCCSP outlined above guarantee that a productive and constructive agenda for action based on those goals will be pursued in the coming year and in the years to come.

## **Appendix—Maryland Commission on Criminal Sentencing Policy**

### **Establishment and Charge**

In spring 1996, the Maryland General Assembly created a Commission on Criminal Sentencing Policy (MCCSP) of 19 members of criminal justice system participants and policymakers. The legislature charged the MCCSP with evaluating the state's sentencing and correctional laws and policies. Chapter 563 of the Laws of Maryland 1996 directed the Commission to make recommendations to the Governor and the General Assembly regarding key aspects of sanctioning policy. Specific directives to the Commission included the following:

- Recommend whether descriptive sentencing guidelines should be retained by the state as a sentencing structure, either in their current form or in a modified form;
- Recommend whether the state should adopt guided discretion sentencing guidelines and, if so, what type of guided discretion sentencing guidelines should be adopted;
- Recommend whether the state should retain parole as a correctional option or eliminate parole for all inmates or any particular category of inmates;
- Recommend whether the state should increase the minimum portion of a sentence that must be served by all inmates or any particular category of inmates;
- Recommend whether the state should eliminate good time credits or otherwise alter the manner in which an inmate may obtain release on mandatory supervision;
- Recommend whether the state needs to take action to ensure that there is a coordinated system of correctional option programs at the state and county levels and, if so, what action should be taken; and

- Recommend whether modifications to other matters relating to state and local laws and policies governing sentencing, parole, mandatory supervision, and correctional options programs should be taken, and, if so, what action should be taken.

The MCCSP reviewed the legislative charge, amended it by one additional task, and approved a mission statement under which the MCCSP was to:

1. Promote sentencing that more accurately reflects the time that an offender will actually be incarcerated;
2. Concentrate prison capacity on the incarceration of violent and career offenders;
3. Reduce any unwarranted disparity in sentences for offenders who have committed similar offenses and have similar criminal histories;
4. Preserve meaningful judicial discretion in the imposition of sentences and sufficient flexibility to permit individualized sentences;
5. Ensure that sentencing judges in every jurisdiction in the State are able to impose the most appropriate criminal penalties, including correctional options programs for appropriate nonviolent offenders; and
6. Ensure that the Secretary of the Department of Public Safety and Correctional Services and local correctional administrators have the authority to place appropriate offenders under their jurisdiction into correctional options and to remove offenders from those options.

MCCSP work to further the goals of the mission statement reflected the testimony of leading scholars, legal experts, and researchers who addressed the MCCSP on three principal areas. The three broad policy areas included: (1) sentencing policies and practice such as the use of voluntary/advisory guidelines for judges; (2) utilization of corrections programs such as home detention or boot camps; and (3) practices regarding release from correctional institutions, such as discretionary parole.

The General Assembly directed the MCCSP to develop a correctional population simulation model to assist in determining the State and local correctional resources that: (1) are required under current laws, policies, and practices relating to sentencing, parole, and mandatory supervision and (2) would be required to implement the MCCSP's recommendations. In keeping with the legislative directive, the MCCSP discussed the impact on correctional resources of MCCSP proposals and alternative scenarios in areas such as truth-in-sentencing policy and operation of judicial guidelines. Impact assessments were developed using a computer simulation of correctional populations. The computer simulation allowed legislators to see the impact of the MCCSP recommendations, alternative proposals that were ultimately rejected, and the impact of any changes the legislature contemplated.

### **MCCSP Activities**

The MCCSP held its initial meeting in July, 1996. Its subsequent activities included review of relevant research and policy initiatives from other states research of Maryland's existing laws and policy related to sentencing and corrections. Hearing testimony from a variety of experts from Maryland and other jurisdictions, the MCCSP commission held 20 full commission meetings, including three two-day meetings. Its Sentencing Guidelines subcommittee and Correctional Options subcommittee held numerous additional meetings, including one joint meeting. The MCCSP also planned and conducted research and policy reviews on a variety of sentencing and corrections topics. The MCCSP heard public comment on various topics relating to sentencing and corrections at three public meeting in Annapolis, Rockville, and Baltimore.

MCCSP research focused primarily on the examination of sentencing and release patterns. In pursuing its research agenda, the Commission collaborated with the Department of Public Safety and Correctional Services, Office of Research and Statistics (ORS) and the Judicial Information System of the Maryland Administrative Office of the Courts. Specific research projects included: (1) an assessment of judicial compliance to the voluntary/advisory sentencing guidelines; (2) an examination of sentencing disparity (i.e., the influence of legal and extralegal factors on the sentence outcome); (3) an examination of circuit court sentence outcome across counties, across crime types, across cells of the sentencing matrixes; (4) a study of time-to-serve (percentage of sentence served); and (5) a study of district court criminal convictions. In addition, the MCCSP sponsored a public opinion survey conducted by the Survey Research Center of the University of Maryland to assess public perceptions of crime and criminal justice system activities.

The MCCSP employed the Structured Sentencing Simulation (SSS) microsimulation model to assess the impact of proposed policy changes on prison and jail bedspace needs (and by extension, correctional costs). The MCCSP selected the model because it was specifically designed for use in states that have adopted sentencing guidelines systems. It was, therefore, well-suited to model the impact of policies that target changes to the sentencing guidelines system. The Commission used the SSS model to estimate the prison bedspace impact of a variety of policy changes, including: (1) the impact of truth in sentencing policies (e.g., variations in percentage of sentence served); (2) the impact of increasing judicial compliance to the sentencing guidelines; and

(3) the impact of incorporating correctional options into the sentencing guidelines matrixes.

### **Sentencing Guidelines**

The MCCSP was instructed by the legislature to study judicial sentencing and make recommendations guided primarily by the following objectives:

- (1) *Reduce unwarranted sentencing disparity in sentences for offenders who have committed similar offenses and have similar criminal histories; and*
- (2) *Preserve meaningful judicial discretion in the imposition of sentences and sufficient flexibility to permit individualized sentences.*

The centerpiece of sentencing reform in Maryland is the voluntary/advisory guidelines system that has been in place statewide for approximately 15 years. The concept of judicial sentencing guidelines was introduced in the late 1970s by the judiciary in response to judicial perceptions of unwarranted sentencing disparity. A judicial Committee on Sentencing was formed by the Court of Appeals and a host of alternative sentencing systems were studied (e.g., determinate sentencing, mandatory sentencing, sentencing councils). In April 1979, the Committee approved a system of voluntary sentencing guidelines for use in circuit courts only. In determining the appropriate sentence range, the guidelines were designed to take both offender and offense characteristics into account.

The existing Maryland guidelines are contained in three separate matrices, one for person offenses, one for property offenses, and one for drug offenses. The existing guidelines were developed to eliminate inappropriate sentence disparities. Having

statewide sentencing guidelines before them, it was expected that judges would be more likely to impose sentences in proportion to increased prior record and increased offense severity, both seen as appropriate legal factors related to differences in sentencing.

Specific goals of the sentencing guidelines as originally promulgated include:

- Increased equity in sentencing, i.e., the reduction of unwarranted variation between similar cases and defendants, while retaining judicial discretion to individualize sentences;
- Articulation of an explicit sentencing policy while providing a regular basis for policy review and change;
- Providing information for new or rotating judges;
- Promotion of increased visibility and understanding of the sentencing process.

These original goals of the voluntary guidelines system are still in place today.

After careful study the MCCSP concluded that the use of sentencing guidelines should not be mandated in district courts at that time, although the MCCSP perceived the following benefits of use: (1) increased uniformity, particularly in sentences for offenses over which the district courts and circuit courts exercise concurrent jurisdiction; (2) greater predictability with respect to anticipated jail and prison bedspace requirements; and (3) control over the utilization of corrections options dispositions to avoid exhaustion of resources by inclusion of persons who properly could be sentenced to less intensive sanctions. Against these possible benefits, however, were the serious problems created by adding another layer of paper work and disputes over the proper allocation of points, etc., to a court system already burdened by a huge volume of cases.

The MCCSP voted to maintain the existing system of voluntary sentencing guidelines. After comparing certain apparent benefits of presumptive sentencing with the

recognized and perceived problems inherent in such a system, a majority of MCCSP members concluded that sentencing guidelines in Maryland should continue to be voluntary, but that steps should be taken to increase judicial compliance with those guidelines.

Increasing judicial compliance to the guidelines is obviously critical to the MCCSP objective of reducing sentencing disparity. The MCCSP recommended three means of increasing judicial compliance and recommended that a permanent sentencing commission oversee efforts intended to improve judicial compliance. A detailed examination of the factors that motivate judicial noncompliance was also recommended. The MCCSP further advised that the proposed strategy of reform (i.e., increasing judicial compliance) be reevaluated by the permanent sentencing commission at the end of one year. The evaluation would be informed by the results of the judicial noncompliance study and a reassessment of judicial compliance rates.

Finally, the MCCSP recommended that a three-judge panel be empowered to reduce mandatory minimum sentences. The MCCSP also recommended that the Chief Judge of the District Court and the State's Attorneys of the counties work together with state support to ensure that criminal history information is available to all sentencing judges in the District Court.

### **Corrections Options**

The MCCSP was instructed by the legislature to study sentencing and corrections policy and make recommendations guided primarily by the following objectives:

- (1) *Concentrate prison capacity on the incarceration of violent and career offenders; and*
- (2) *Ensure that sentencing judges in every jurisdiction in the State are able to impose the most appropriate criminal penalties, including correctional options programs for appropriate nonviolent offenders.*

Options programs have traditionally focused on sentenced, incarcerated, non-violent offenders who meet stringent program eligibility criteria, and on offenders having problems during assignment to traditional community supervision. In FY 1997, Maryland had approximately 1,000 offenders under intensive supervised probation through its Corrections Options Program (COP). In addition, 400 offenders were in home detention, 360 in day reporting, 560 in boot camps, 90 in Regimented Offender Treatment Center, and 50 in Baltimore Pre-Release Unit for Women. During the same period, 540 offenders went through the Baltimore City Drug Treatment Court, according to the state Department of Public Safety and Correctional Services (DPSCS).

Many county-run corrections options also exist, but typically on a small scale with no statewide coordination, limited funding, and no state technical support. The limits to local corrections options appeared to be most pronounced in the rural jurisdictions. According to a University of Baltimore survey, community service was the most prevalent local option. Home detention, work release, and intensive probation were also used by county jails. Community service programs included 16,572 participants in FY 1997. A DPSCS survey found slightly fewer, 15,600 participants.

Home detention operates largely through local jails in Maryland. In FY 1997, there were 1,315 offenders in 11 local electronic monitoring programs, according to the

University of Baltimore survey. The DPSCS found a slightly larger number of home detention participants. Twelve counties reported pre-trial release programs in FY 1997 involving 7,616 offenders, according to the University of Baltimore survey.

A central recommendation of the MCCSP was that Maryland should expand its Corrections Options Program to allow offenders to be placed in the program through judicial sentencing to a new Corrections Options Authority, under recommendations promulgated by revised sentencing guidelines. MCCSP analysis revealed that more offenders can and probably should receive placement in the Corrections Options Program (COP) and that the existing program was geographically limited. To accomplish this expansion, a number of preliminary steps would be required.

First, the MCCSP recommended that a Corrections Options Authority be created within the DPSCS, and this Authority have as its primary task the assessment, placement, supervision, and interim sanctioning of offenders. The MCCSP sought to provide judges with a means of sentencing offenders to a new Corrections Authority as an alternative to standard probation or traditional incarceration. It was contemplated that sentences would include imposition of a specific period of incarceration, with execution of all or a portion of that sentence suspended on condition of referral to the Corrections Options Authority. This procedure would assure that, in addition to the graduated sanctions that could be imposed in the COP, there would be an additional sanction of significant imprisonment available for those who would not complete the program. The MCCSP further recommended that Maryland's "Break-the-Cycle" model be used to guide programming decisions.

Second, the MCCSP recommended that the DPSCS, the proposed permanent sentencing commission, and representatives of local government begin planning for the creation of a State and Local Partnership for Corrections Options. The purpose of the Partnership would be to invite local treatment programs and detention centers to participate in a State-funded COP with local choice in daily operations. The Partnership was designed to find an economical means of building on the emerging infrastructure of drug testing, sanctions, and drug treatment activity.

Third, the MCCSP recommended that the permanent sentencing commission incorporate corrections options as a sentencing guideline recommendation to help guide selection of offenders and to help manage growth in the Corrections Options Program. The guideline framework provided a means of controlling costs as well as keeping punishment proportional to the crime.

### **Release Policies**

An additional charge of the MCCSP by the General Assembly was to recommend release practices guided by the following primary objective: *Promote sentencing that more accurately reflects the time that an offender will actually be incarcerated.* With this objective, the MCCSP heard from state and national experts and studied determinate sentencing reforms, parole practices, and good conduct reforms. It also studied (1) the federal Violent Offender Incarceration Truth in Sentencing Act to learn about federal incentives to restrict or abolish parole and (2) time served on sentences in Maryland.

The MCCSP voted to recommend retention of the existing system of release practices for the present time. Maryland parole practices were found to be generally

sound since Maryland inmates serve a higher proportion of sentences than the national average and since improvements are expected as new parole release guidelines are developed. The MCCSP found that, although the practice of providing good conduct, educational and work credits to inmates was generally sound, Maryland practice may be improved through simplification. Within the framework of the existing system, the MCCSP recommended further study of good conduct allowances by a permanent sentencing commission, with the goal of simplification. Finally, to promote sentencing that more accurately reflects actual time served, the MCCSP recommended that criminal sentences be issued in terms of a sentence range (i.e., a minimum and maximum sentence).