

MARYLAND
STATE COMMISSION
ON
CRIMINAL SENTENCING POLICY

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State Commission on Criminal Sentencing Policy

Annual Report 2000

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This document was written and produced by the State Commission on Criminal Sentencing Policy. The following SCCSP staff members prepared this report: Michael Connelly, Ph.D., Executive Director; Claire Souryal-Shriver, Ph.D., Research Director; Douglas J. McDonald, J.D., Field Coordinator; Kate Wagner, Policy Specialist; and Jennifer Cox, Project Manager.

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 2000, the State Commission on Criminal Sentencing Policy made solid progress clearing up backlogged work, preparing the state sentencing guidelines for inclusion in the Code of Maryland Regulations (COMAR), and establishing delivery of future guidelines training, sentencing data collection and reporting, and public information mechanisms.

Statistics collected by the SCCSP on judicial compliance with the state's voluntary sentencing guidelines revealed the same rates of compliance in FY2000 as in FY1999, halting the annual declines of recent years. Although not statistically conclusive, compliance rose slightly among property and person cases in FY2000, and the continued decrease in compliance in drug offenses was mainly due to departures above the recommended guidelines. Of particular importance regarding compliance, Maryland sentencing data demonstrated that a disproportionate amount of departure from the guidelines occurred within a single set of offenses, distribution of cocaine or heroin.

In 2001, the SCCSP will continue its review of the state sentencing guidelines and make necessary changes to ensure their consistency and coherence. It will increase its training and information activities and will work with Maryland circuit courts to improve rates of compliance with 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.

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Maryland State Commission on Criminal Sentencing Policy

Annual Report for 2000

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 members, including 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:

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

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

Court of Appeals	Honorable Arrie W. Davis	Baltimore City
Circuit Court	Honorable John C. Themelis	Baltimore City
District Court	Honorable Timothy J. Doory	Baltimore City

Members appointed by the President of the Senate:

Senator	Honorable Delores G. Kelley	Baltimore City and County
Senator	Honorable Clarence M. Mitchell IV	Baltimore City and County

Members appointed by the Speaker of the House:

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

Ex-Officio Members:

Attorney General	J. Joseph Curran, Jr.	
State Public Defender	Stephen E. Harris	
Secretary of Public Safety & Correctional Services	Stuart O. Simms	

Three full-time and two part-time staff members assisted the Commission in 2000. Michael Connelly, Ph.D. became the Executive Director of the SCCSP in November 1999. Prior to joining the SCCSP staff, 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-Shriver, Ph.D. was the Research Director of the MCCSP and continued in the position with the SCCSP. Kate Wagner came on staff full-time as a Policy Specialist in June 2000 to assist the work of the Corrections Options subcommittee and to assume responsibility for the maintenance and enhancement of the SCCSP web site. Doug McDonald, formerly a private attorney in Phoenix, AZ, joined the staff part-time in June 2000 to serve as SCCSP Field Coordinator to staff outreach and training functions. Jennifer Cox also started work part-time in June 2000 as the SCCSP Project Manager overseeing the development and maintenance of the sentencing database and its related activities.

The SCCSP received staff support in 2000 from the Office of Financial Administration in the Office of the Governor, 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 and Department of Criminology and Criminal Justice. The commission 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.md.us/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.

SCCSP ACTIVITIES IN 2000

The SCCSP was very active and productive in 2000. Two of its subcommittees achieved substantial progress toward goals and objectives outlined in the SCCSP enabling legislation. The **Corrections Options** subcommittee assembled criminal justice practitioners from across the state as a workgroup to advise on costs, implementation, and other concerns regarding development of a corrections options program in Maryland. The SCCSP then made available the product of the workgroup and of the subcommittee to other state policymakers for possible legislative action in the 2001 session of the Maryland General Assembly.

The **Sentencing Guidelines** subcommittee met regularly through teleconferencing and face-to-face meetings throughout 2000 on a number of matters needing immediate attention. Due to the lack of attention to guidelines matters during the work of the SCCSP's predecessor, the MCCSP, a backlog of items had developed. As a result, much of the work of this subcommittee focused on classifying by seriousness level all the new offenses that had been passed in recent years. In that task the subcommittee also identified problems with classifications of previously categorized offenses, which it corrected or has sent on in this report to the General Assembly for consideration. Further, it began classification of offenses, such as traffic offenses, that had not previously been included in guidelines consideration.

The Sentencing Guidelines subcommittee also revised the material in the existing sentencing guidelines manual for inclusion in the Code of Maryland Regulations (COMAR), as required in the SCCSP enabling legislation. After completion of that work, the subcommittee sent the material to the AELR Committee for review of proper style before later submitting the material to the Committee again for final review and inclusion in COMAR.

In addition, the Sentencing Guidelines subcommittee proposed revisions to the existing sentencing guidelines worksheet to reflect concerns identified by the MCCSP and through discussion with sentencing participants. Staff developed a brochure of common mistakes and problems in worksheet completion to be sent to all users and to be used in training sessions. The SCCSP also proposed a draft of common factors leading to departures from sentencing guidelines, both aggravating and mitigating, that would be included on the guidelines worksheets, as required in the SCCSP enabling legislation.

All Sentencing Guidelines subcommittee proposals described above, including the COMAR draft and the new classifications, were sent to criminal justice practitioners and participants for review and feedback before final actions were taken. The SCCSP expects to disseminate and implement the worksheet and the departure factors in 2001. Finally, the subcommittee has directed staff to coordinate activities with the state Legislative Reference Service in its current restructuring of the state criminal code.

In 2000 the SCCSP and its staff have significantly extended **outreach services** into the state criminal justice community. The Executive Director, the Field Coordinator, and, on one occasion, the Research Director met with the Administrative Judges of each Maryland Circuit Court to determine issues and concerns that the judges believed should be addressed by the

SCCSP; the Executive Director also presented an update on SCCSP activities to the May 2000 conference of the Administrative Judges and to Chief Judge Robert A. Bell. In addition, staff have met for informational and introductory purposes with officials of many related state agencies and groups, including the Office of the Lieutenant Governor, the Department of Public Safety and Correctional Services, the Division of Parole and Probation, the Maryland Parole Commission, the Alternative Dispute Resolution Commission, and Families Against Mandatory Minimums. Staff also held focus group-like meetings with state's attorneys in Howard County and with Parole and Probation officers to discuss problems and concerns with completion of the sentencing guidelines worksheets.

SCCSP staff represented the state and the SCCSP at several national and regional **meetings and conferences** in 2000. These included workshops or conferences held by the U.S. Department of Justice's Office of Justice Programs on prison population projections, issues in sentencing and corrections, and the progress of sentencing guidelines systems. Commissioners and staff also attended or participated on panels at meetings of the National Association of Sentencing Commissions, the Justice Research and Statistics Association, the Maryland Correctional Administrators Association, and the American Society of Criminology. Further, staff provided data and information in response to several requests from news media, non-profit criminal justice organizations, and academic researchers.

In collaboration with graduate students from the University of Maryland Department of Criminology and Criminal Justice, SCCSP staff initiated **study of selected likely topics of future concern** for SCCSP decision-making. The graduate students studied Maryland and other state practice in these areas and reported to the SCCSP on the aging of the Maryland prison population, issues in recodification of the state criminal code, judicial compliance with sentencing guidelines, sentencing disparity within selected variables, and impact of alternative sanctions on later prison bedspace and recidivism.

SCCSP also substantially enhanced **the SCCSP web site** in 2000, extending its use as an outreach mechanism for the public and policymakers. SCCSP staff electronically formatted the *Maryland Sentencing Guidelines Manual* and put the manual on the SCCSP website to benefit all practitioners that need instruction and information on the completion of Sentencing Guidelines Worksheets and the guidelines themselves. The version of the Manual on the SCCSP website is an exact duplicate of the hard copy that had been previously distributed by the Administrative Office of the Courts and is currently being distributed by the SCCSP. In an effort to assist those practitioners who complete the Sentencing Guidelines Worksheets, staff added a section entitled "Common Mistakes in Worksheet Completion" to the site. This section follows a brochure to be distributed to all parties who participate in worksheet completion.

Two new sections were added to the site in order to make the site more useful to the public, practitioners, researchers, and policy makers. The first new section, entitled "Sentencing in the News," focuses on current sentencing issues that appear in publications across the country. This section gives a month-by-month review of sentencing issues that have made local and national headlines. Summaries of articles from national newspapers, magazines, academic journals, and websites are indexed by subject matter, including recent legislation and court decisions.

The second new section, entitled “Criminal Justice Resources,” has three subsections: Publications, State Government and Criminal Justice Links. This section brings together a collection of publications by components of the U.S. Department of Justice, Office of Justice Programs and by state sentencing commissions on a variety of sentencing issues; a list of offices in Maryland State government from the legislative, judicial, and executive branches; and an index of resources including federal government offices, research organizations, public interest groups, associations, non-profit groups and think tanks representing a wide range of viewpoints on criminal justice.

Finally, as 2000 was the first full year for the SCCSP in operation with nearly full staffing as authorized, much staff time and effort stressed **creation and implementation of basic office requirements**, including hiring, equipping, doing inventory, and establishing permanent office space. In addition, staff obtained a new Byrne Memorial grant from the Governor’s Office of Crime Control and Prevention to supplement state funding as well as completing necessary work on budgeting and Managing for Results for FY2002.

JUDICIAL COMPLIANCE WITH MARYLAND'S VOLUNTARY SENTENCING GUIDELINES

Overview

Voluntary sentencing guidelines for circuit courts were implemented statewide in Maryland in 1983. The sentencing guidelines were developed by the judiciary in response to judicial perceptions of unwarranted sentencing disparity.² During the late 1970s and early 1980s, many states across the country adopted structured sentencing reforms, such as sentencing guidelines.³ These reforms were intended to remedy largely indeterminate and highly discretionary sentencing systems deemed unjust or ineffective by many.⁴

Maryland's sentencing guidelines are voluntary. The judiciary is expected to use the sentence recommendation as a guide, but is not mandated to sentence within the recommended guidelines range.

The guidelines are also intended to be *descriptive*.⁵ That is, the recommended sentence ranges are expected to serve as a measuring stick of past judicial sentencing behavior. It was anticipated at the outset that as sentencing practices evolved, the sentencing guidelines would evolve.⁶

The founders of the Maryland sentencing guidelines articulated the following goals (which remain the stated goals today):⁷

- ❑ Increase 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 and rotating judges; and

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

³ Blumstein, A., Cohen, J., Martin, S.E., & M. Tonry, eds. (1983). Research on Sentencing: The Search for Reform. 2 vols. Washington, D.C.: National Academy Press.

⁴ Rothman, D. (1983). *Sentencing Reforms in Historical Perspective*. Crime and Delinquency, 29.

⁵ Levin, M.A., 1984: 175, 180.

⁶ Levin, M.A., 1984: 175.

⁷ Administrative Office of the Courts. (1987). Maryland Sentencing Guidelines Manual:ii.

- Promotion of increased visibility and understanding of the sentencing process.

Structure of the Sentencing Guidelines

The sentencing guidelines were developed for criminal offenses originating in a Maryland circuit court. Offenses were divided into three categories: (a) offenses against persons; (b) drug offenses; and (c) property offenses.⁸ A two-variable grid (or matrix) containing sentence recommendations was developed for each offense category.

An individual's location or placement within the grid is a function of two factors: (a) the seriousness of the defendant's criminal history (the *Offender Score*); and (b) the seriousness of the offense (the *Offense Score* for person offenses and the *Seriousness Category* for drug and property offenses). The sentence recommendation is determined by the intersection of these two scores on each grid. Each cell of the grid contains a recommended sentence range, e.g., 1 Year to 3 Years.

The Offender Score is the same across each matrix. It consists of the following indicators of criminal history: (a) seriousness of the adult prior record; (b) seriousness of the juvenile record; (c) whether an individual had previously violated parole or probation; and (d) whether an individual was involved with the criminal justice system at the time of the instant offense.

All criminal offenses (person, drug, and property) are assigned a *Seriousness Category* as a measure of offense seriousness. The Seriousness Category ranges from "I" to "VII" for offenses against persons, and from "II" to "VII" for drug and property offenses. Seriousness Categories of "I" or "II" correspond to the most serious offenses and "VII" corresponds to the least serious offenses. The Seriousness Category is used as the sole measure of offense seriousness for drug and property offenses. The Offense Score for *person* offenses is composed of the Seriousness Category (converted to a point score) and the following three additional indicators of offense seriousness: (a) victim vulnerability; (b) victim injury; and (c) use of a weapon (see the Maryland Sentencing Guidelines Manual for more detail).⁹

Since the Person Offense matrix is based on a more detailed measure of offense seriousness, it contains roughly three times the number of cells as the drug and property matrixes. The grid for person offenses consists of 120 cells (and hence, 120 recommended sentence ranges); the drug matrix contains 40 cells, and the property matrix has 48 cells. Sentence ranges within cells tend to be wide. The average widths of the ranges are 8.85 years for person offenses, 4.05 years for property offenses, and 2.22 years for drug offenses.¹⁰

⁸ Note that weapons offenses are considered Person offenses.

⁹ Administrative Office of the Courts. (1987) Maryland Sentencing Guidelines Manual.

¹⁰Griffin, E.K. (1994). An Evaluation of Maryland's Sentencing Guidelines: Have They Reduced Disparity in Sentencing. Thesis (M.A.) College Park, MD: University of Maryland, p. 71.

Judicial Compliance with the Sentencing Guidelines

The guidelines were drafted with the expectation that two-thirds of the sentences (67%) would fall within the recommended sentence range. If an imposed sentence falls within the recommended sentencing guidelines range (excluding suspended time), the sentence is considered to be in compliance with the sentencing guidelines. The *Maryland Sentencing Guidelines Manual* instructs judges to sentence within the recommended sentencing guidelines range, absent “compelling” circumstances to depart. If a judge chooses to depart from the guidelines range, the judge is expected to provide a written reason for departure, indicating “specifically why the sentence actually imposed is more appropriate, reasonable, or equitable than a sentence within the guidelines.”¹¹ Examination of departure reasons, however, reveals that a written explanation for departure is generally missing.

The State Commission on Criminal Sentencing Policy (SCCSP) has been charged with the responsibility of annually examining judicial compliance with the sentencing guidelines (see Article 41, §21-106). 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. The AOC tracked sentencing guidelines “eligible” cases and attempted to ensure that all such cases were included in the sentencing guidelines database. Note, however, that only sentencing guidelines worksheets that were completed and forwarded to the AOC (and now the SCCSP) were included in the database and subsequent analyses.¹²

The present examination of judicial compliance will focus on sentences for **single** count convictions between fiscal years 1997 through 2000.¹³ 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 AOC or the SCCSP during FY 2000, roughly 8,000 contained single count convictions.

¹¹ Administrative Office of the Courts. (1987) Maryland Sentencing Guidelines Manual: 4.

¹² The SCCSP has not yet been able to provide estimates of the completion and submission rates of sentencing guidelines worksheets. The SCCSP plans to conduct such analyses during the next year.

¹³ Analyses of judicial compliance in Maryland have traditionally focused on sentences for single count convictions. Studies of compliance for single count convictions permit the examination of compliance by crime category, offense type, and cell of the sentencing matrix. Because multiple count convictions consist of any combination of person, drug, and property offenses, meaningful interpretations of sentencing patterns within matrixes cannot be obtained. An additional data restriction, the inability to reliably distinguish between multiple sentences that run consecutively or concurrently during particular years, precluded analyses of multiple count convictions in the present report.

Results

Aggregate Judicial Compliance. Previous analyses of judicial compliance have indicated that compliance is generally low. For example, the Maryland Commission on Criminal Sentencing Policy (MCCSP) examined judicial compliance over a ten-year period from January 1987 to September 1996. During this time, the aggregate compliance rate across crime categories was 55%. As shown in Table 1, when judges departed from the guidelines during this time period, they were more likely to sentence below the recommended sentencing guidelines range (38%), than above the sentencing guidelines range (8%).

Table 1 compares judicial compliance rates from the MCCSP study to compliance rates for each subsequent fiscal year (1997 through 2000).¹⁴ The comparison revealed that aggregate rates of judicial compliance have fallen farther below the benchmark of 67%. Between FY 1997 and FY 1998, the aggregate compliance rate declined from 52% to 47% and then again from 47% to 40% in the following fiscal year.

Table 1. Judicial Compliance with the Maryland Voluntary Sentencing Guidelines by Fiscal Year for Single Count Convictions.			
Fiscal Year	Within Guidelines	Below Guidelines	Above Guidelines
MCCSP ¹⁵ January, 1987 - September, 1996 N=80,607	44,048 (54.6)	30,283 (37.6)	6,276 (7.8)
FY 1997 (N=5,681)	2,783 (52.4)	2,127 (40.1)	399 (7.5)
FY 1998 ¹⁶ (N=6,010)	2,693 (47.3)	2,614 (45.9)	383 (6.7)
FY 1999 ¹⁵ (N=5,259)	2,014 (39.9)	2,743 (54.3)	292 (5.8)

¹⁴ Note that between FY 1997 and FY 2000, n=1,023 cases were missing either the sentence length or components of the Offense or Offender Scores and are therefore excluded from the analyses of compliance. Note that n=3 of these individuals were also missing the offense type. Due to missing data values, the number of cases used in the compliance analyses will not equal the total N reported for each FY.

¹⁵ See Maryland Commission on Criminal Sentencing Policy. (December 31, 1998). Final Report.

¹⁶ Note that the number of defendants sentenced and included in the database during **calendar** year 1998 was roughly one-third of the number of defendants sentenced and included in the database during calendar year 1997. Defendants included in the database during 1998 may not represent the total population of offenders sentenced in 1998.

Table 1. Judicial Compliance with the Maryland Voluntary Sentencing Guidelines by Fiscal Year for Single Count Convictions.			
Fiscal Year	Within Guidelines	Below Guidelines	Above Guidelines
FY 2000 (N=7,897)	3,105 (39.9)	4,181 (53.8)	490 (6.3)
FY 1997 - FY 2000 (N=24,847)	10,595 (44.5)	11,665 (49.0)	1,564 (6.6)

Judicial Compliance by Crime Category. Table 2 examines judicial compliance by crime category and fiscal year. Generally speaking, compliance rates were highest for property offenses (average of 60% over 4 years) and lowest for drug offenses (average of 36% over 4 years). Compliance rates between FY 1997 and FY 2000 have declined slightly for person offenses (54% to 50%), and significantly for drug offenses (46% to 30%). Compliance rates for property offenses have fluctuated over the last four years, but not systematically.

Table 2. Judicial Compliance with the Maryland Voluntary Sentencing Guidelines by Crime Category and Fiscal Year.			
Fiscal Year	Within Guidelines	Below Guidelines	Above Guidelines
<i>Offenses Against Persons:</i>			
SCCSP (1987-Sept., 1996)	12,694 (57.2)	7,748 (34.9)	1,741 (7.8)
FY 1997 N=1,741	879 (54.3)	598 (36.9)	142 (8.8)
FY 1998 N=1,871	926 (52.1)	738 (41.5)	113 (6.4)
FY 1999 N=1,420	656 (48.7)	594 (44.1)	96 (7.1)
FY 2000 N=2,109	1,032 (49.9)	897 (43.4)	140 (6.8)
FY 1997 - FY 2000 N=7,141	3,493 (51.3)	2,827 (41.5)	491 (7.2)
<i>Drug Offenses:</i>			
SCCSP (1987-Sept., 1996)	20,666 (49.2)	18,132 (43.2)	3,171 (7.6)

Table 2. Judicial Compliance with the Maryland Voluntary Sentencing Guidelines by Crime Category and Fiscal Year.			
FY 1997 N=2,631	1,145 (45.8)	1,196 (47.8)	161 (6.4)
FY 1998 N=3,067	1,205 (41.2)	1,556 (53.2)	166 (5.7)
FY 1999 N=3,037	916 (31.0)	1,917 (64.8)	125 (4.2)
FY 2000 N=4,643	1,389 (30.4)	2,941 (64.3)	242 (5.3)
FY 1997- FY 2000 N=13,378	4,655 (35.9)	7,610 (58.7)	694 (5.4)
<i>Property Offenses:</i>			
SCCSP (1987-Sept., 1996)	10,687 (65.0)	4,403 (26.8)	1,364 (8.3)
FY 1997 N=1,309	759 (63.9)	333 (28.0)	96 (8.1)
FY 1998 N=1,072	562 (57.0)	320 (32.5)	104 (10.5)
FY 1999 N=802	442 (59.3)	232 (31.1)	71 (9.5)
FY 2000 N=1,142	684 (60.3)	343 (30.2)	108 (9.5)
FY 1997- FY 2000 N=4,325	2,447 (60.4)	1,228 (30.3)	379 (9.4)

Judicial Compliance by Circuit and Fiscal Year. Compliance rates by judicial circuit and fiscal year are shown in Table 3.¹⁷ Aggregate compliance rates by circuit ranged from 26% (across four years) in the Eighth Circuit to 63% (across four years) in the First Circuit. While compliance rates appeared to be relatively stable over time in five of the eight circuits, the First,

¹⁷ **First Circuit:** Dorchester, Somerset, Wicomico, and Worcester Counties; **Second Circuit:** Caroline, Cecil, Kent, Queen Anne's, Talbot Counties; **Third Circuit:** Baltimore and Harford Counties; **Fourth Circuit:** Allegany, Garrett, and Washington Counties; **Fifth Circuit:** Anne Arundel, Carroll, and Howard Counties; **Sixth Circuit:** Frederick and Montgomery Counties; **Seventh Circuit:** Calvert, Charles, Prince George's, and St. Mary's Counties; and **Eighth Circuit:** Baltimore City.

Sixth, and Eighth Circuits exhibited fairly consistent downward trends. The aggregate compliance rate in the Sixth Circuit, for example, decreased from 58% to 46% between FY 1997 and FY 2000. Similarly, the aggregate compliance rate in the Eighth Circuit decreased from 38% to 20% between FY 1997 and FY 2000.

By and large, when judges in each circuit departed from the recommended guidelines range, they were more likely to sentence below the recommended guidelines range. Departures in the First, Second, and Fourth Circuits, however, were more evenly split between upward and downward departures.

Table 3. Judicial Compliance with the Maryland Voluntary Sentencing Guidelines by Judicial Circuit and Fiscal Year for Single Count Convictions.			
Judicial Circuit	Within Guidelines	Below Guidelines	Above Guidelines
<i>First Circuit Total:</i>	888 (63.3)	257 (18.3)	259 (18.5)
FY 1997	216 (71.5)	33 (10.9)	53 (17.5)
FY 1998	235 (63.3)	72 (19.4)	64 (17.3)
FY 1999	189 (66.1)	51 (17.8)	46 (16.1)
FY 2000	248 (55.7)	101 (22.7)	96 (21.6)
<i>Second Circuit Total:</i>	377 (59.0)	153 (23.9)	109 (17.1)
FY 1997	99 (61.9)	30 (18.8)	31 (19.4)
FY 1998	94 (58.4)	40 (24.8)	27 (16.8)
FY 1999	63 (61.8)	22 (21.6)	17 (16.7)
FY 2000	121 (56.0)	61 (28.2)	34 (15.7)
<i>Third Circuit Total:</i>	1,782 (51.8)	1,446 (42.0)	214 (6.2)
FY 1997	435 (52.4)	333 (40.1)	62 (7.5)
FY 1998	419 (49.7)	373 (44.2)	51 (6.0)
FY 1999	336 (49.1)	308 (45.0)	41 (6.0)
FY 2000	592 (54.6)	432 (39.9)	60 (5.5)
<i>Fourth Circuit Total:</i>	607 (57.5)	270 (25.6)	179 (17.0)
FY 1997	132 (60.6)	50 (22.9)	36 (16.5)
FY 1998	172 (52.8)	101 (31.0)	53 (16.3)
FY 1999	121 (59.9)	49 (24.3)	32 (15.8)
FY 2000	182 (58.7)	70 (22.6)	58 (18.7)
<i>Fifth Circuit Total:</i>	1,057 (51.5)	878 (42.8)	118 (5.8)
FY 1997	283 (53.5)	215 (40.6)	31 (5.9)
FY 1998	236 (49.3)	215 (44.9)	28 (5.8)
FY 1999	229 (48.6)	216 (45.9)	26 (5.5)
FY 2000	309 (53.8)	232 (40.4)	33 (5.7)
<i>Sixth Circuit Total:</i>	811 (50.1)	701 (43.3)	106 (6.6)
FY 1997	240 (58.1)	146 (35.4)	27 (6.5)

Table 3. Judicial Compliance with the Maryland Voluntary Sentencing Guidelines by Judicial Circuit and Fiscal Year for Single Count Convictions.			
Judicial Circuit	Within Guidelines	Below Guidelines	Above Guidelines
FY 1998	196 (49.6)	172 (43.5)	27 (6.8)
FY 1999	147 (47.3)	141 (45.3)	23 (7.4)
FY 2000	228 (45.7)	242 (48.5)	29 (5.8)
<i>Seventh Circuit Total:</i>	2,641 (61.8)	1,287 (30.1)	344 (8.1)
FY 1997	760 (62.3)	351 (28.8)	108 (8.9)
FY 1998	694 (60.8)	369 (32.3)	79 (6.9)
FY 1999	474 (60.9)	236 (30.3)	68 (8.7)
FY 2000	713 (62.9)	331 (29.2)	89 (7.9)
<i>Eighth Circuit Total:</i>	2,432 (26.0)	6,673 (71.5)	235 (2.5)
FY 1997	618 (37.7)	969 (59.2)	51 (3.1)
FY 1998	647 (32.8)	1,272 (64.5)	54 (2.7)
FY 1999	455 (20.6)	1,720 (77.7)	39 (1.8)
FY 2000	712 (20.3)	2,712 (77.2)	91 (2.6)

Judicial Compliance by Circuit and Crime Category. Table 4 assesses compliance within judicial circuits by crime category during the past two fiscal years (FY 1999 and FY 2000). The analysis revealed three seemingly distinct patterns of judicial compliance among circuits.

In four of the eight judicial circuits (the First, Second, Fourth, and Seventh Circuits), compliance rates for each crime category were fairly similar and relatively high. For example, in the First Circuit, the compliance rate by crime category ranged from 57% for person offenses to 63% for property offenses. The aggregate compliance rate across crime categories in these circuits approached or exceeded 60%.

In two of the remaining four circuits (the Third and Fifth Circuits), the aggregate compliance rate for each circuit was lower (approximately 52%). In both circuits, the aggregate compliance rate was pulled down by the compliance rate in one crime category. In the Third Circuit, the compliance rate for person offenses was 46%, for example, and in the Fifth Circuit, the compliance rate for drug offenses was 46%.

Lastly, in the remaining two circuits (the Sixth and Eighth Circuits), the aggregate compliance rate fell below 50%. In both circuits, the compliance rate for drug offenses was especially low. For example, in the Sixth Circuit the compliance rate for drug offenses was 39% and in the Eighth Circuit the compliance rate for drug offenses was 15%. In the Eighth circuit, the very low compliance rate for drug offenses, coupled with the large number of drug offenses relative to person and property offenses, drove the aggregate compliance rate. While the aggregate compliance rate in the Eighth Circuit was 20%, the compliance rate for both person offenses and property offenses was more than two times as high (42% and 47%, respectively).

Table 4. Judicial Compliance with the Maryland Voluntary Sentencing Guidelines by Judicial Circuit and Crime Category for Single Count Convictions (FY 1999 and FY 2000).

Judicial Circuit	Within Guidelines	Below Guidelines	Above Guidelines
<i>First Circuit Total:</i>	437 (59.8)	152 (20.8)	142 (19.4)
Person	151 (57.0)	84 (31.7)	30 (11.3)
Drug	199 (60.9)	49 (15.0)	79 (24.2)
Property	87 (62.6)	19 (13.7)	33 (23.7)
<i>Second Circuit Total:</i>	184 (57.9)	83 (26.1)	51 (16.0)
Person	49 (59.0)	23 (27.7)	11 (13.3)
Drug	97 (58.4)	39 (23.5)	30 (18.1)
Property	38 (55.1)	21 (30.4)	10 (14.5)
<i>Third Circuit Total:</i>	928 (52.5)	740 (41.8)	101 (5.7)
Person	314 (45.6)	350 (50.8)	25 (3.6)
Drug	310 (55.4)	210 (37.5)	40 (7.1)
Property	304 (58.5)	180 (34.6)	36 (6.9)
<i>Fourth Circuit Total:</i>	303 (59.2)	119 (23.2)	90 (17.6)
Person	79 (51.6)	46 (30.1)	28 (18.3)
Drug	192 (62.7)	59 (19.3)	55 (18.0)
Property	32 (60.4)	14 (26.4)	7 (13.2)
<i>Fifth Circuit Total:</i>	538 (51.5)	448 (42.9)	59 (5.6)
Person	168 (50.3)	142 (42.5)	24 (7.2)
Drug	183 (46.4)	189 (48.0)	22 (5.6)
Property	187 (59.0)	117 (36.9)	13 (4.1)
<i>Sixth Circuit Total:</i>	375 (46.3)	383 (47.3)	52 (6.4)
Person	141 (49.1)	126 (43.9)	20 (7.0)
Drug	138 (39.2)	200 (56.8)	14 (4.0)
Property	96 (56.1)	57 (33.3)	18 (10.5)
<i>Seventh Circuit Total:</i>	1,187 (62.1)	567 (29.7)	157 (8.2)
Person	419 (57.6)	251 (34.5)	57 (7.8)
Drug	488 (61.9)	248 (31.4)	53 (6.7)
Property	280 (70.9)	68 (17.2)	47 (11.9)
<i>Eighth Circuit Total:</i>	1,167 (20.4)	4,432 (77.4)	130 (2.3)
Person	367 (41.8)	469 (53.5)	41 (4.7)
Drug	698 (15.1)	3,864 (83.3)	74 (1.6)
Property	102 (47.2)	99 (45.8)	15 (6.9)

Judicial Compliance by Mode of Disposition. Table 5 examines whether judicial compliance varies by mode of disposition (i.e., plea agreement, plea without agreement, court trial, and jury trial) using four years of data (FY 1997 through FY 2000).¹⁸ Note that the vast majority of cases were resolved by means of a plea agreement (89%). Another 8% were resolved by a plea without agreement, and approximately 4% were resolved by either a court or jury trial (2% jury trial and 2% court trial).

The analysis revealed that aggregate compliance rates varied as a function of disposition type. Compliance was lower for cases resolved by a plea agreement (45%) or plea without agreement (44%), and higher for cases that went to trial by court or jury (54% and 55%, respectively). This was not true of all crime categories, however. Property offenders were more likely to receive a sentence *within* the recommended guidelines range if the case was resolved by a plea agreement or plea without agreement. Both person and drug offenders were more likely to receive a sentence *below* the recommended guidelines range if the case was resolved by a plea agreement.

Drug offenders were also more likely to receive a sentence below the recommended guidelines range if a case was resolved by a plea without agreement. There was virtually no difference in the compliance rate for person offenses, if a case was resolved by a plea without agreement or a court trial. However, individuals convicted of all three categories of offenses were more likely to receive a sentence that exceeded the recommended sentencing guidelines range if the case was resolved by a jury trial.

Clearly, since the vast majority of cases were disposed by plea agreements or pleas without agreement, the compliance rate for these disposition types strongly influenced the aggregate compliance rate. In fact, the aggregate compliance rate across all modes of disposition was virtually identical to the compliance rate for cases resolved by a plea agreement (44.5% and 45.2%, respectively).

Table 5. Judicial Compliance with the Maryland Voluntary Sentencing Guidelines by Mode of Disposition between July, 1996 and June, 2000.			
Disposition Type	Within Guidelines	Below Guidelines	Above Guidelines
<i>Plea Agreement</i>			
Statewide	8,258 (45.2)	8,851 (48.5)	1,157 (6.3)
Person	2,668 (50.8)	2,239 (42.7)	340 (6.5)
Drug	3,652 (37.2)	5,642 (57.5)	522 (5.3)
Property	1,938 (60.5)	970 (30.3)	295 (9.2)

¹⁸ Note that the mode of disposition was missing for n=3,247 individuals.

Table 5. Judicial Compliance with the Maryland Voluntary Sentencing Guidelines by Mode of Disposition between July, 1996 and June, 2000.			
Disposition Type	Within Guidelines	Below Guidelines	Above Guidelines
<i>Plea without Agreement</i>			
Statewide	739 (43.8)	819 (48.5)	129 (7.6)
Person	228 (55.1)	143 (34.5)	43 (10.4)
Drug	336 (33.9)	595 (60.0)	61 (6.1)
Property	175 (62.3)	81 (28.8)	25 (8.9)
<i>Court Trial</i>			
Statewide	173 (54.2)	119 (37.3)	27 (8.5)
Person	76 (54.7)	49 (35.3)	14 (10.1)
Drug	68 (52.3)	53 (40.8)	9 (6.9)
Property	29 (58.0)	17 (34.0)	4 (8.0)
<i>Jury Trial</i>			
Statewide	167 (54.8)	64 (21.0)	74 (24.3)
Person	96 (56.5)	38 (22.4)	36 (21.2)
Drug	51 (54.3)	20 (21.3)	23 (24.5)
Property	20 (48.8)	6 (14.6)	15 (36.6)

Examination of the Drug Offense Matrix. In order to further explore the low aggregate compliance rate for drug offenses, compliance was examined by row and cell of the drug offense matrix. The analysis revealed that a high percentage of drug offenses (73%) between FY 1997 and FY 2000 fell in one row of the drug offense matrix (Seriousness Category III - Except Importation) and consisted almost exclusively of cocaine and heroin distribution cases.¹⁹ Compliance with the sentencing guidelines for this row was extremely low, ranging from 12% to 31% by cell.

As shown in Table 6, if cocaine and heroin distribution cases are excluded from the compliance analysis for drug offenses, the compliance rate for drug offenses would increase to 64%. Thus, the compliance rate for all drug offenses except cocaine and heroin distribution was close to the benchmark of 67%.

¹⁹ Article 27, §286(b)(2), Article 27, §286(c)(1).

Given the large number of cocaine and heroin distribution cases relative to other offenses,²⁰ these two offenses strongly influenced the statewide aggregate compliance rate as well (see Table 6). To illustrate, if these two offenses are excluded from the aggregate analyses, the compliance rate for all offenses statewide would increase to 57% (from 45%).

The 1987 to 1996 data supported the same finding, but the impact was not as pronounced (see Table 6). The exclusion of heroin and cocaine distribution offenses increased the aggregate compliance rate from 55% to 61%. The impact was less because the relative percentage of heroin and cocaine distribution cases was smaller in previous years (28% versus 37%), and the compliance rate for these offenses during that period was higher.

Table 6. Judicial Compliance with the Maryland Voluntary Sentencing Guidelines and the Influence of Cocaine and Heroin Distribution.			
Year	Within Guidelines	Below Guidelines	Above Guideline
<i>FY 1997 - FY 2000</i>			
<u>Drug Offenses:</u>	4,655 (35.9)	7,610 (58.7)	694 (5.4)
Drug Offenses Excluding Distribution of Cocaine and Heroin	2,377 (63.9)	935 (25.1)	408 (11.0)
Cocaine and Heroin Distribution Only	2,278 (24.7)	6,675 (72.2)	286 (3.1)
<i>FY 1997 - FY 2000</i>			
<u>All Offenses Statewide:</u>	10,595 (44.5)	11,665 (49.0)	1,564 (6.6)
All Offenses Excluding Distribution of Cocaine and Heroin	8,317 (57.0)	4,990 (34.2)	1,278 (8.8)
<i>SCCSP (1987-Sept., 1996)</i>			
<u>All Offenses Statewide</u>	44,048 (54.6)	30,283 (37.6)	6,276 (7.8)
All Offenses Excluding Distribution of Cocaine and	35,076 (60.6)	17,747 (30.7)	5,033 (8.7)

²⁰ Note that 66% of the cocaine and heroin distribution cases statewide occurred in the Eighth Circuit.

Table 6. Judicial Compliance with the Maryland Voluntary Sentencing Guidelines and the Influence of Cocaine and Heroin Distribution.			
Year	Within Guidelines	Below Guidelines	Above Guideline
Heroin			
Cocaine and Heroin Distribution Only	8,972 (39.4)	12,536 (55.1)	1,243 (5.5)

Examination of the Person Offense Matrix. Judicial compliance by cell of the person offense matrix was also examined. Cells within the matrix that contained a relatively high percentage of downward departures were identified. Upon examination of offenses that fell within these cells, seven offenses with judicial compliance rates of less than 50% (across cells) were distinguished.²¹

One of the seven offenses, Assault 2nd degree, was by far the most prevalent person offense. It accounted for just over one-quarter of the person offenses between FY 1997 and FY 2000 (26%). Across all cells, the judicial compliance rate for Assault 2nd degree was 45%. Of the seven offenses, the offense with the lowest compliance rate was Assault 1st degree (13%).

Based on proportionality concerns, the SCCSP recently reviewed the seriousness categories assigned to Assault 1st and Assault 2nd degrees. Relative to other guidelines offenses of similar nature and with comparable maximum penalties, these two offenses were identified as offenses that had been assigned a disproportionately high seriousness category. The SCCSP voted to reduce the Seriousness Category for Assault 2nd degree from “IV” to “V” and for Assault 1st degree from “II” to “III.”

In light of the fact that Assault 2nd degree was the most frequent person offense, the impact of the SCCSP’s recent revision to its Seriousness Category was simulated using four years of data (FY 1997 through FY 2000).²² The results revealed that if Assault 2nd degree had been categorized as a Seriousness Category V offense during this time period, the aggregate compliance rate statewide for person offenses would have equaled 58%, an increase of 7%.

²¹ These seven offenses included the following: (a) Assault 1st degree (Art. 27, §12A-1); (b) Assault 2nd degree (Art. 27, §12A); (c) Aiding Escape (formerly Art. 27, §139(c)); (d) Escape - From Penitentiary, etc. (formerly Art. 27, §139(a)(1),(3)); (e) Rape, 2nd degree (Art. 27, §463(a)); (f) Robbery with a deadly weapon (Art. 27, §487); and (g) Sex offense, 2nd degree (Art. 27, §464A(a)).

²² The analysis assumes that the judicially imposed sentences for Assault 2nd degree would remain constant.

Viewed differently, if *both* Assault 1st degree and Assault 2nd degree were excluded from the compliance analyses, the compliance rate for all *other* person offenses would equal 56%. Therefore, the SCCSP's decision to revise the Seriousness Category of both Assault 1st and Assault 2nd degree should result in increased compliance levels for person offenses, assuming that sentencing practices remain constant.

Summary

Judicial compliance rates with 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 compliance rate across crime categories (55%) fell short of the benchmark of 67%. Compliance rates were highest 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.

Examination of four subsequent years of data (FY 1997 through FY 2000) revealed a continued downward trend in aggregate compliance rates. This was true primarily for drug offenses where the aggregate rate fell from 46% to 30% during that four-year period. The compliance rate for person offenses decreased as well, but the magnitude of the decrease was much smaller (from 54% to 50%). Historically, the compliance rate for property offenses has been higher than the compliance rate for both person and drug offenses. The most recent data continues to support this pattern.

Comparison of judicial compliance rates by mode of disposition (plea agreement, plea without agreement, court trial, or jury 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. Since the vast majority of offenses are resolved by a plea agreement, the aggregate compliance rate statewide was almost identical to the compliance rate for cases resolved by plea agreements (44.5% to 45.2%, respectively).

The downward trend in judicial compliance rates was not observed in all judicial circuits. In five of the eight judicial circuits, aggregate compliance rates have not fluctuated systematically between FY 1997 and FY 2000.

The remaining three circuits (the First, Sixth, and Eighth Circuits), however, exhibited a fairly consistent downward trend. The most notable declines occurred in the Sixth and the Eighth Circuits. While the First Circuit experienced a decline, compliance rates *within* the circuit relative to other circuits were high. The aggregate compliance rate in the First Circuit was 72% in FY 1997, but decreased to 56% in FY 2000.

The Sixth and Eighth Circuits may be distinguished from the other six circuits by the extremely low rate of compliance for drug offenses (39% and 15%, respectively). In the Eighth Circuit especially, the very low compliance rate for drug offenses in

combination with the large number of drug offenses relative to person and property offenses, strongly influenced the aggregate compliance rate.

The exploratory analysis of compliance for drug offenses suggests that the low compliance rate stems primarily from the low compliance rate for cocaine and heroin distribution cases (Seriousness Category III - Without Importation). Thus, it is not surprising that 66% of the cocaine and heroin distribution cases occur in the Eighth Circuit. If these two offenses are excluded from the compliance calculation, the statewide compliance rate for all *other* drug offenses would equal 64% (an increase of 28%). Similarly, if these two offenses were excluded from the statewide compliance rate for *all* offenses, the overall rate would increase to 57% (an increase of 12%).

A more in-depth analysis of person offenses resulted in the identification of seven offenses that appeared to influence the overall compliance rate. Each offense had a compliance rate of less than 50%. Of the seven offenses, Assault 1st degree, had the lowest compliance rate (13%). Another offense, Assault 2nd degree, accounted for just over 25% of the total number of person offenses. Judicial compliance for Assault 2nd degree was also quite low (45%).

Due to proportionality concerns, the SCCSP voted to change the Seriousness Category of Assault 1st degree from “II” to “III” and the Seriousness Category of Assault 2nd degree from “IV” to “V”. Simulations revealed that the compliance rate for person offenses would increase to 58% if Assault 2nd degree had been categorized as a Seriousness Category V (using FY 1997-FY 2000 data). Thus, barring other changes to sentencing practices, the aggregate compliance rate for person offenses may be expected to increase once this revision takes effect.

In summary, the present analyses suggest that the aggregate compliance rates have decreased over time, especially for drug offenses. Trends in aggregate compliance rates, however, obscure variation at the circuit level, as evidenced by the relatively stable compliance rates in five circuits. The decrease in the aggregate judicial compliance rate for drug offenses was strongly influenced by the low compliance rate for two offenses (which occurred predominantly in one circuit).

The results of these analyses underscore the importance of more detailed analyses of compliance. Examination of compliance within cells of the sentencing matrixes, and indeed by individual offenses, is critical. Knowledge of the factors that influence judicial noncompliance is essential to policymakers as they revise and improve Maryland’s voluntary sentencing guidelines system.

RECOMMENDATIONS FOR LEGISLATIVE ACTION ON OFFENSES

In the course of updating the table of guidelines offenses for inclusion in the Code of Maryland Regulations, the Commission reviewed all the current guidelines offenses for sentence proportionality and consistency. During this review, the Commission identified a number of offenses that carry penalties inconsistent with comparable offenses. The Commission also spotted organizational inconsistencies among various offenses. The Commission, therefore, recommends legislative consideration of the categories of offenses below for possible revision to make penalties and organization more consistent.

1. Credit Card Offenses

Currently, credit card crimes can be found in two different Articles of the Maryland Code (see Commercial Law Article, § 14-1403 and Article 27, § 145). These offenses should be combined and placed in Article 27 only. Inconsistencies in the penalty provisions should be addressed as well.

2. Manslaughter/Life Threatening Conduct Offenses

The Maryland Code currently contains several variations of manslaughter-type offenses under Article 27, §§ 387, 388, 388A and 388B. The penalties are inconsistent and thus the offenses should be divided into degrees or otherwise revised to warrant different penalties.

3. Obstruction of Justice Offenses

Penalties among these offenses are inconsistent. Perjury offenses (Art. 27, §§ 435 and 437) have 10-year maximum penalties. Comparable offenses such as inducing false testimony (Article 27, § 761), retaliation (Article 27, § 762) and obstruction (Article 27, § 26) have 5-year maximum penalties. Additionally, harboring (Article 27, §§ 268F and 268G) carries a 1-year maximum while resisting arrest and hindering prosecution are common law offenses that carry substantially greater penalties.

4. Fraud Offenses

There are many different types of fraud offenses in the criminal code with significantly varying penalties. These offenses range from a 1-year maximum (Identity Fraud, Art. 27, § 231) to maximums of 3, 5, 7, 10 and 15 (Will Fraud, Art. 27, § 127) years. The fraud offenses should be consolidated and the penalties should be more consistent.

In addition, the Commission recommends legislative review of the penalties for the following individual offenses: 1) Possession of a firearm under Art. 27, § 291A; 2) Using a minor to assist with illegal acts under Art. 27, § 420; and 3) Violation of Home Detention Program under Correctional Services Article, § 3-409.

SCCSP AGENDA IN 2001

The SCCSP work of 2000 has set an extensive agenda for action in 2001. Among foreseeable SCCSP activities in the coming year are:

- ❑ Increased attention to guidelines orientation and training, including continued development of the SCCSP web site to feature training materials, a regular newsletter informing readers of recent work on the guidelines, a revised guidelines worksheet manual, use of focus groups and workshops to identify areas of concern, and continued education on changes in the guidelines and their implementation
- ❑ Improvements in the sentencing guidelines data collection and sharing processes, including inclusion in the ongoing statewide criminal history record improvement process and development of workgroups of users to troubleshoot problem areas and to identify areas of information needs
- ❑ Consideration of concerns about and revisions of the current prison population projection model
- ❑ Coordination with legislative staff and committees on the current restructuring and reconsideration of the state criminal code
- ❑ Completion of work on translation of the guidelines process into COMAR and on the sentencing guidelines worksheet and the list of common departure factors
- ❑ Examination of factors affecting judicial compliance with the voluntary guidelines in Maryland
- ❑ Possible revision of the sentencing guidelines to reflect legislated development of corrections options in Maryland sentencing
- ❑ Research on selected topics of concern in sentencing policy to commissioners and practitioners

CONCLUSION

In 2000 the State Commission on Criminal Sentencing Policy made solid progress clearing up backlogged work, preparing the state sentencing guidelines for inclusion in the Code of Maryland Regulations (COMAR), and establishing delivery of future guidelines training, sentencing data collection and reporting, and public information mechanisms.

Statistics collected by the SCCSP on judicial compliance with the state's voluntary sentencing guidelines revealed the same aggregate rates of compliance in FY2000 as in FY1999, halting the annual declines of recent years. Although not statistically conclusive, compliance rose slightly among property and person cases in FY2000, and the continued decrease in compliance in drug offenses was mainly due to departures above the recommended guidelines. Of particular importance regarding compliance, Maryland sentencing data demonstrated that a disproportionate amount of departure from the guidelines occurred within a single set of offenses, distribution of cocaine or heroin.

In 2001, the SCCSP will continue its review of the state sentencing guidelines and make necessary changes to ensure their consistency and coherence. It will increase its training and information activities and will work with Maryland circuit courts to improve rates of compliance with 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.

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.

MCSSP 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 meetings 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).