

MARYLAND STATE COMMISSION ON
CRIMINAL SENTENCING POLICY

ANNUAL REPORT

December 2003

HONORABLE RAYMOND THIEME
Chairman

TABLE OF CONTENTS

Executive Summary	ii
The State Commission on Criminal Sentencing Policy	1
Establishment and Charge of the State Commission	1
SCCSP Composition	1
SCCSP Authorizations	3
SCCSP Activities in 2003	4
Judicial Departure from Maryland’s Voluntary Sentencing Guidelines	5
Results	5
Judicial Departure Rates Overall	5
Judicial Departure Rates by Crime Category	8
Judicial Departure Rates by Type of Disposition	9
Report on Adjustments from Reconsidered Sentences	11
Summary	11
SCCSP Planned Activities for 2003	12
Conclusion	12
Appendix – “Sentencing FAX”	13
<i>Court Dispositions in Maryland Circuit Courts, July 2001 – April 2002</i>	14
<i>Legal Representation in Maryland Circuit Courts, July 2001 – April 2002</i>	15
<i>Legal Representation and Sentence Lengths in Maryland Circuit Courts, July 2001 – April 2002</i>	16
<i>Prior Criminal History Scores in Maryland Circuit Courts, January 1999 – June 2002</i>	17
<i>Criminal Offense Scores in Maryland Circuit Courts, January 1999 – June 2002</i>	18
<i>Women and Sentencing in Maryland Circuit Courts July 2001 – June 2002</i>	19
<i>Women and Sentencing Outcomes in Maryland Circuit Courts, July 2001 – June 2002</i>	20

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 2003, the SCCSP classified criminal offenses passed by the 2003 Maryland General Assembly; began reporting of new data on reconsidered sentences, types of pleas, and victims' involvement in sentencing; considered legislation concerning diminution credits; provided data and information to State agencies and media; began development of online applications of the process; and posted research reports on topics related to sentencing and to criminal justice to provide a resource for State policymakers desiring thorough information for their decisions. In 2003, the SCCSP continued work on its web site (www.msccsp.org) to make it more thorough and user-friendly and to allow citizens and policymakers to have better access to information concerning Maryland circuit court sentencing. 2003 marks the second year that the SCCSP counted sentences that resulted from "ABA pleas," that is, pleas binding on prosecution, defense, and the sentencing judge, as within guidelines to reflect the consensus of the parties and the communities that they represented. Also, the SCCSP recognized the State's interest in promoting sentences to correctional options, such as substance abuse treatment and other similar programs, even though those sentences might not fall within the sentencing guidelines. The SCCSP accepted sentences to certain specified alternative sanctions (specified in COMAR) as within guidelines. At the moment the only comparable data is for 2001, thus it is the only additional year of data included in this report.

The SCCSP receives worksheets from all eight Circuit courts in the State of Maryland. In 2002 the commission received approximately 19,000 worksheets. These worksheets provide descriptive information on offenders as well as sentences delivered by the courts. With these worksheets the SCCSP can determine how many cases fall within, below, or above the guidelines. The benchmark or standard compliance and departure rate the commission has been working towards is 65% of cases sentenced within the guidelines and 35% of cases either below or above the guidelines. The analysis in the report revealed rate of departure rose from 13% to 20% between 2001 and 2002. In the past two years departure rates have fluctuated by 7 percentage points. Most circuits experienced an increase in departure in 2002.

Comparison of judicial departure rates by mode of disposition (plea agreement, plea without agreement, jury trial, or court trial) revealed that sentences imposed as a result of a plea agreement were more likely to fall below the recommended sentencing guidelines range. Upward departures were most common among cases resolved by a jury trial.

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

In 2004 the SCCSP will examine possible adjustments to the sentence ranges in the cell of each guidelines matrix, as well as considering inclusion of correctional options into the matrices. New reports on sentencing-related issues and concerns will go up on the SCCSP web site on a regular basis for use by the public and State policymakers, including more of its new “Sentencing FAX” reports and reports on the future effect of technological change on sentencing practices in Maryland and across the nation. SCCSP staff will develop and expand its training exercises and materials to ease and promote the use of the guidelines in all circuit courts and oversee implementation of the worksheet process on-line. The SCCSP will work diligently to fulfill its legislatively mandated mission of assisting judiciary in bringing proportional, nondisparate sentencing to the State criminal justice process and to the people of Maryland.

THE STATE COMMISSION ON CRIMINAL SENTENCING POLICY

Establishment and Charge of the State Commission

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

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

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

SCCSP Composition

In 2003, the SCCSP was composed of 19 voting and 3 ex officio members listed below. The Chairman, the Honorable Raymond G. Thieme, was appointed by the Governor in August to lead the State Commission on Criminal Sentencing Policy.

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

<i>Members Appointed by the Governor</i>	
Chair	Honorable Raymond G. Thieme
State's Attorney	Honorable Robert Riddle
Criminal Defense Attorney	Richard A. Finci, Esquire
Victims' Advocacy Group	Russell P. Butler, Esquire
Law Enforcement	Chief Gary W. McLhinney
Criminal Justice or Corrections Policy Expert	Charles F. Wellford, Ph.D.
Local Detention Center	Barry L. Stanton
Public	Janis Judson, Ph.D.
Public	James V. Anthenelli, Esquire
<i>Members Appointed by the Chief Judge of the Court of Appeals of Maryland</i>	
Court of Appeals	Honorable Arrie W. Davis
Circuit Court	Honorable John C. Themelis
District Court	Honorable Timothy J. Doory
<i>Members Appointed by the President of the Senate</i>	
Senator	Honorable Delores G. Kelley
Senator	Honorable John A. Giannetti
<i>Members Appointed by the Speaker of the House</i>	
Delegate	Honorable Curtis S. Anderson
Delegate	Honorable Joseph F. Vallario, Jr.
<i>Ex-Officio Members</i>	
Attorney General	J. Joseph Curran, Jr.
State Public Defender	Stephen E. Harris
Secretary of Public Safety & Correctional Services	Mary Ann Saar

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 2003

COMAR. The Maryland General Assembly required in the SCCSP enabling legislation that the Commission put the process for completion of the voluntary sentencing guidelines into COMAR. Classification of new offenses from the 2003 General Assembly and changes to the sentencing guidelines worksheet required new submissions in 2003. The changes included changing all remaining Article 27 references to the corresponding Criminal Law Article references, adding or clarifying definitions of unclear terms in the Sentencing Guidelines Manual such as “adjudication” and “departure.”

The major substantive change to COMAR regarding the sentencing guidelines worksheet in 2003 was a change in the sentencing guidelines for criminal offenses with multiple victims. If there are separate offenses for different victims, the guidelines are calculated by adding together the upper range of the highest of the upper guidelines range for each victim. See COMAR 14.22.01.12 for further explanation.

Training and materials. SCCSP staff in 2003 continued its mandated work of supplying training and materials on the sentencing guidelines throughout the State. To supplement the additional work for COMAR, the SCCSP updated its sentencing guidelines manual and held training sessions around the State, at the invitation of circuits and districts. The SCCSP continued work and consultation with its sentencing guidelines worksheet workgroup, composed of practitioners and users around the State, to provide regular feedback on use of and problems with the worksheets. Finally, the SCCSP continued development of an on-line worksheet process accessible through the Internet, with greater expected efficiencies and cost-savings for all users.

Subcommittee work. The SCCSP’s permanent subcommittee on sentencing guidelines did the initial work and made the recommendations for all the COMAR submissions mentioned above. In addition, the subcommittee in 2003 continued consideration of the current sentencing practices of circuit courts for each cell of each matrix in the sentencing guidelines process. This consideration allowed initial deliberation on what cells, if any, should be adjusted in the future.

Special reports. The SCCSP continued the production of the periodic “Sentencing Fax” publication in 2003. Through work by full-time staff and University of Maryland interns data reports on the sentencing practices in the State were published on the SCCSP website. These reports discussed topics as they related to sentencing such as criminal history scores, pre-sentence investigations, legal representation, dispositions, and gender.

JUDICIAL DEPARTURE FROM MARYLAND'S VOLUNTARY SENTENCING GUIDELINES

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

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

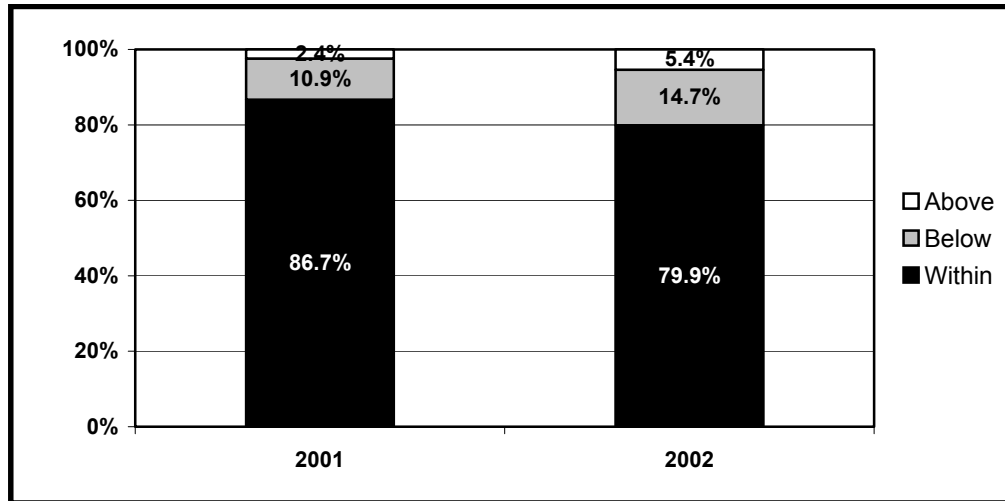
The present examination of judicial departure rates will focus on sentences for **single** count convictions between calendar years 2001 and 2002. Single count convictions account for approximately 75% of the total number of guidelines worksheets received each year. For example, of the 19,000 sentencing guidelines worksheets submitted to the SCCSP in 2002, roughly 15,000 contained single count convictions.

Judicial Departure Rates Overall

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

Figure 1 provides a breakdown of the rates from 2001 to 2002. In the past two years, departure rates have risen, starting at 13% in 2001, and rising to 20% in 2002. The overall departure rate below the guidelines increased by 4% while the departure rate above the guidelines increased by 3%. This results in an increase of 7% in the aggregate departure rate for Maryland Circuit courts. In spite of the increase in departure rates, the overall rate remains below the benchmark rate of 33%.¹

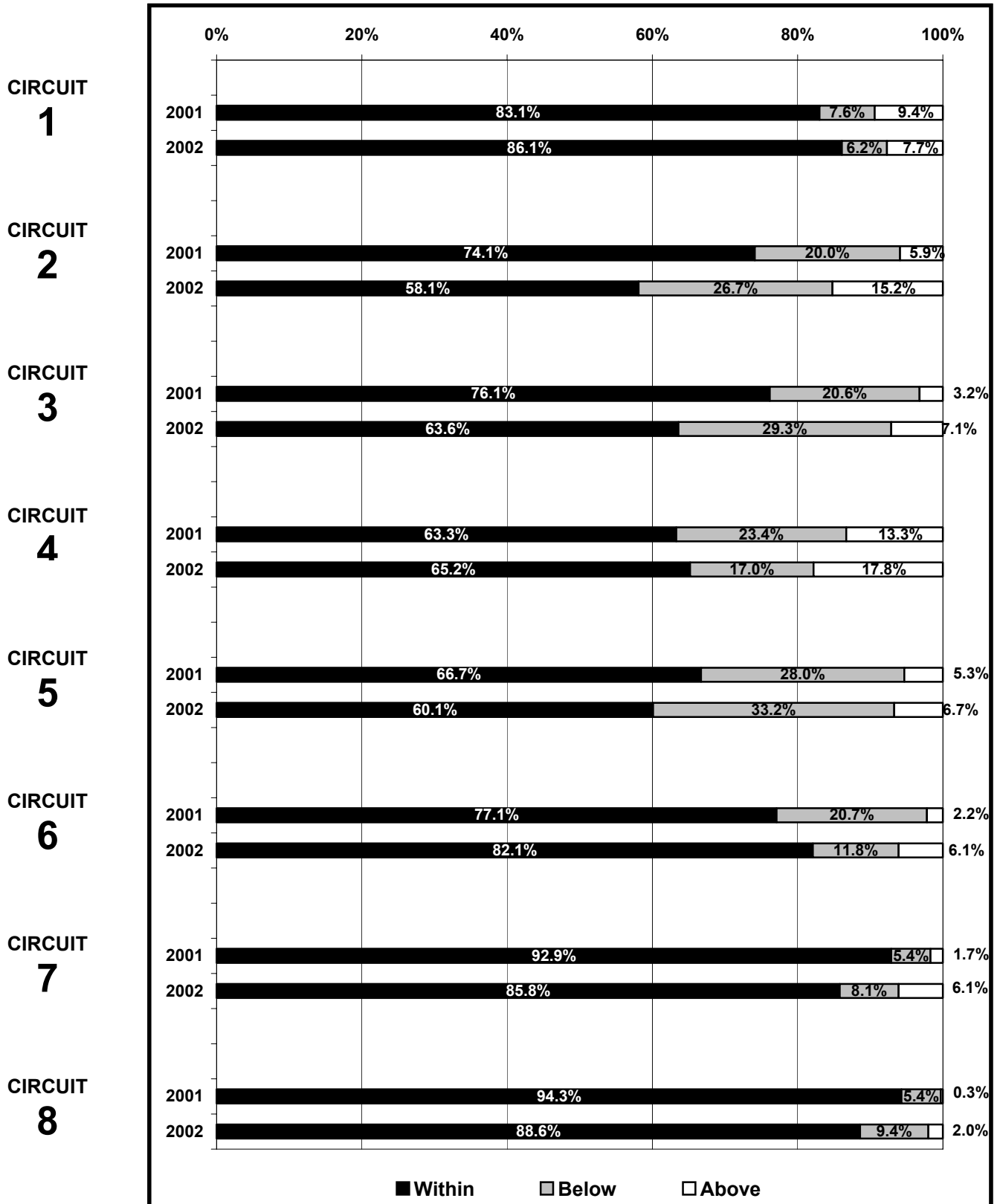
Figure 1. Sentencing Guidelines Departure by Year



As shown in Figure 2, only three Circuits' departure rates decreased. The largest decrease was in the Sixth Circuit (5%) followed by First Circuit (3%), and the Fourth Circuit (2%). The departure rates ranged as high as 42% (Second Circuit) to as low as 11% (Eighth Circuit). Half of the Circuits departure rates were below 18%. Overall, most circuits are below or very close to the target departure rate of 33%.

¹ Prior to 2001, the definition for departure rate was different. Only sentences within the guideline ranges were considered compliant. Under the old definition overall departure rate for 2001 is 49% and for 2002 is 52%. This definition of departure places the overall rate above the 33% benchmark.

Figure 2. Sentencing Guidelines Departures by Circuit and Year

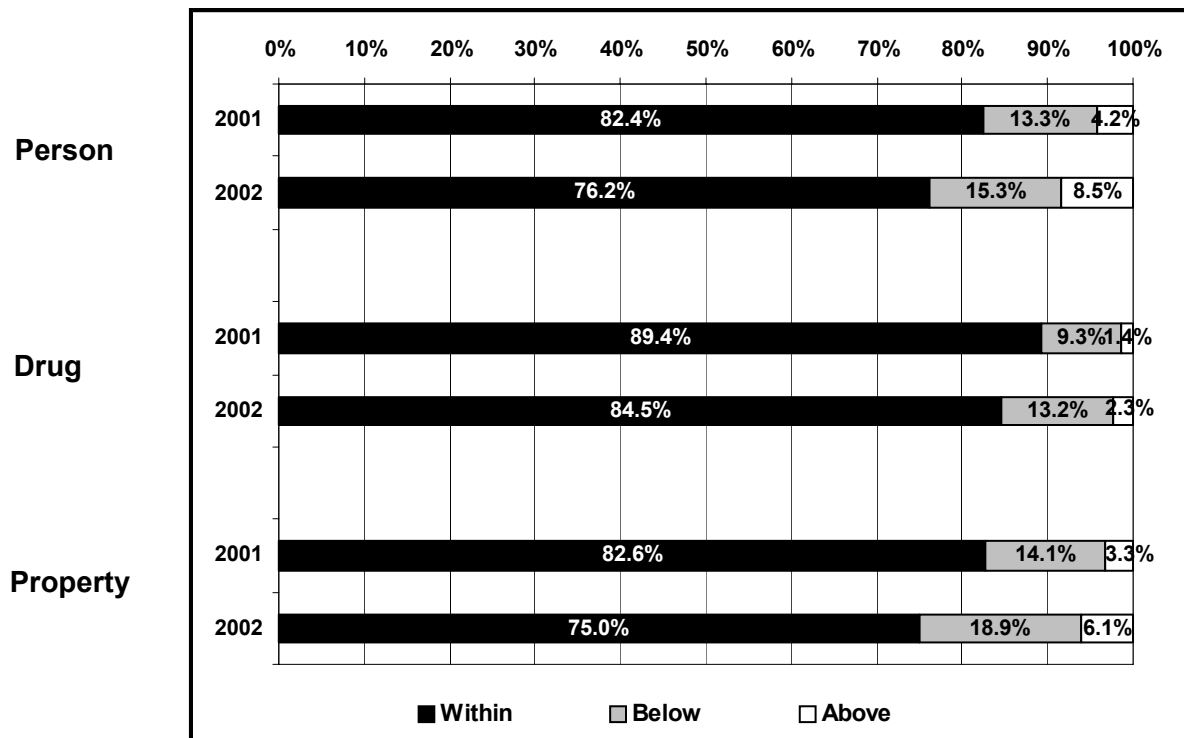


MARYLAND JUDICIAL CIRCUITS	
First:	Dorchester, Somerset, Wicomico, and Worcester Counties
Second:	Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties
Third:	Baltimore and Harford Counties
Fourth:	Allegany, Garrett, and Washington Counties
Fifth:	Anne Arundel, Carroll, and Howard Counties
Sixth: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

Judicial Departure Rates by Crime Category

Figure 3 examines judicial departures by crime category. Between 2001 and 2002 all three offense categories experienced an increase in departure rates which ranged from 5% for drug offenses to 8% for property offenses. In 2002, property offenses had the highest departure rate at 25% followed by person offenses with 24%, and drug offenses had the lowest departure rate with 16%. Thus, the departure rate for all three categories are below the benchmark rate of 33%.

Figure 3. Sentencing Guidelines Departures by Crime Category and Year



Judicial Departure Rates by Type of Disposition

Figure 4 provides a breakdown of case disposition types (i.e., plea agreement, plea without agreement, jury trial, and court trial) over the past three years. The vast majority of cases were resolved by a plea agreement (82%). Another 7% were resolved by a plea with no agreement and roughly 11% of cases were resolved by either bench or jury trial (2% and 9% respectively)

Figure 4. Sentencing Guidelines Departures by Type of Disposition

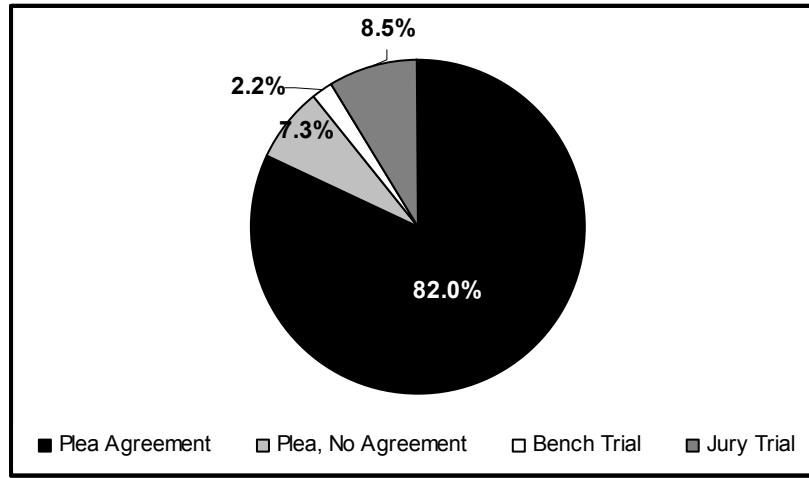


Figure 5 examines whether judicial departures varied by mode of disposition (i.e., plea agreement, plea without agreement, jury trial, and court trial) over the past three years. The lowest departure rates occurred in plea agreements (9%). No agreement cases (42%) and bench trials (46%) had the next lowest departure rates. Jury trials (52%) had the highest rate of departure.

Figure 5. Sentencing Guidelines Departures by Type of Disposition

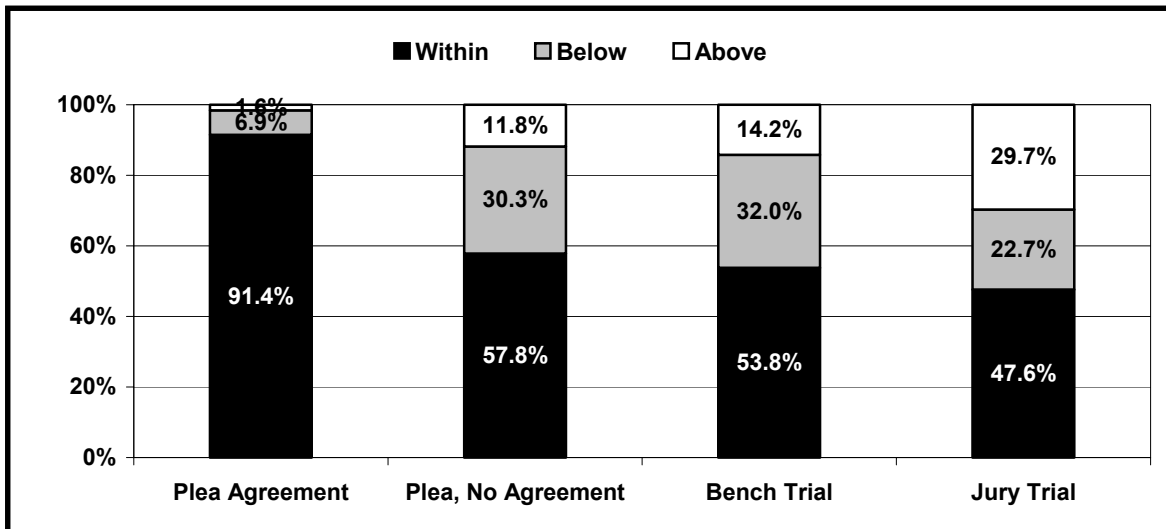
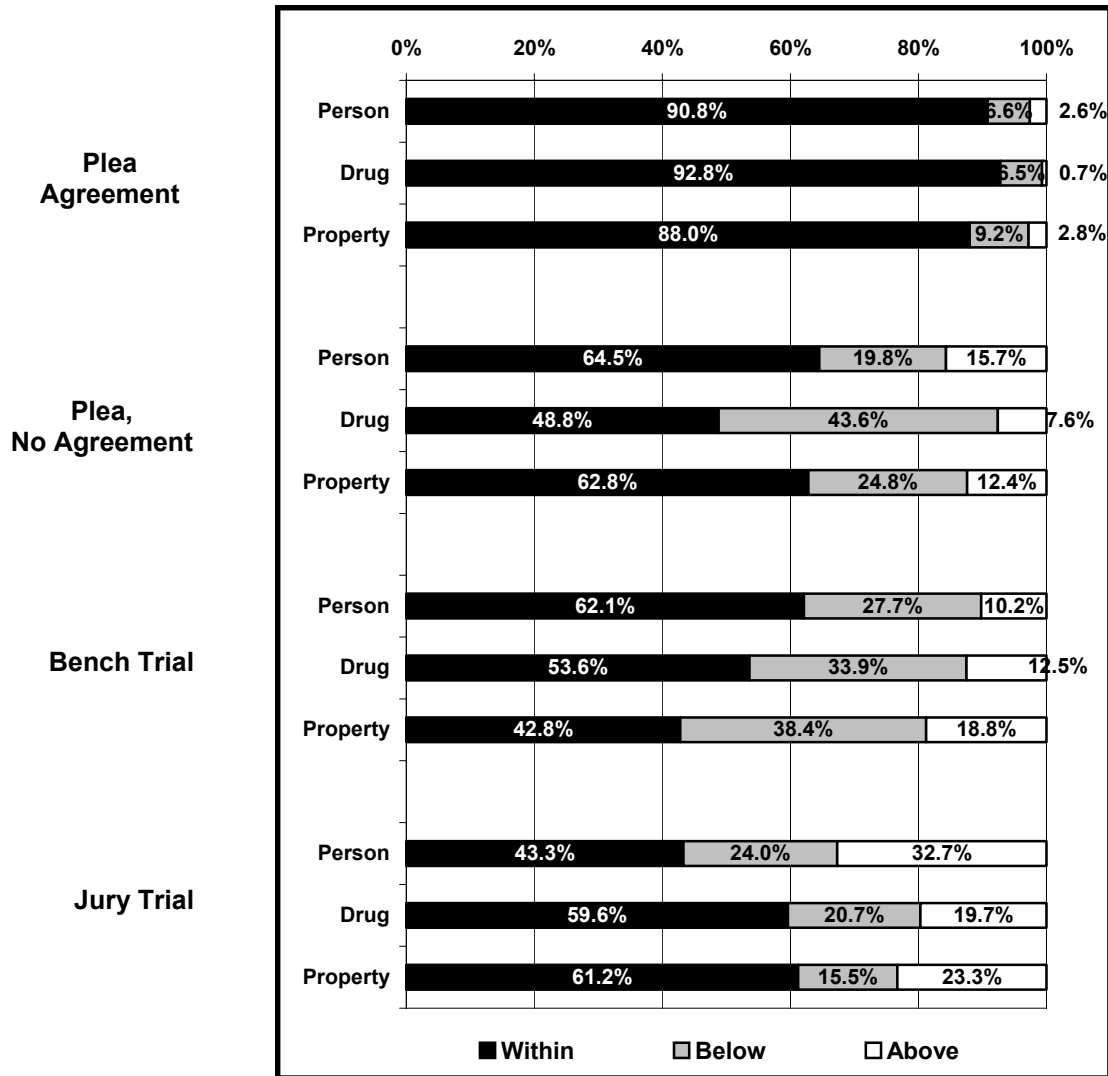


Figure 6 provides a breakdown of departure rates by crime category and disposition. Plea agreements had the lowest departure rate for every crime category. The highest departure rate for the remaining person cases were given in jury trials (57%). Plea, no agreement and bench trial dispositions had similar departure rates (35% and 37% respectively). The highest departure rate for drugs appeared in pleas with no agreement. Property cases with the highest departure rates were found in bench trials.

Figure 6. Sentencing Guidelines Departures by Crime Category and Disposition



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

Table 5. Case Reconsiderations

Circuit	Offense	Cases
FIRST	<i>Assault 2nd Degree</i>	1
	<i>Possession of Marijuana</i>	1
SECOND	<i>Possession of Marijuana</i>	1
FIFTH	<i>Possession of Marijuana</i>	1
SIXTH	<i>Assault 2nd Degree</i>	1
	<i>Wearing, Carrying, Transporting Handgun</i>	1
SEVENTH	<i>Assault 1st Degree</i>	1
	<i>Assault 2nd Degree</i>	1
	<i>Burglary 1st Degree</i>	1
	<i>Burglary 2nd Degree</i>	2
	<i>Burglary 3rd Degree</i>	1
	<i>Armed Carjacking</i>	1
	<i>CDS, Distribution</i>	2
	<i>CDS, Distribution (Cocaine)</i>	3
	<i>CDS, Possession (Cocaine)</i>	1
	<i>CDS, Possession (Heroin)</i>	1
	<i>CDS, Possession (Marijuana)</i>	1
	<i>False Statement</i>	2
	<i>Handgun in Crime of Violence</i>	1
	<i>Kidnapping</i>	1
	<i>Manslaughter (Voluntary)</i>	1
	<i>Motor Vehicle Theft</i>	1
	<i>Murder 1st Degree</i>	2
<i>Robbery</i>	7	
<i>Robbery With a Deadly Weapon</i>	3	
<i>Violation of Probation</i>	3	

The SCCSP is working closely with the State Administrative Office of the Courts (AOC) to ensure that all circuit court judges know to submit the worksheets for reconsidered sentences and to try to compare its data with AOC data. In addition, the SCCSP has coordinated with the Maryland Bar Association in its report with the law schools at the University of Maryland and the University of Baltimore on the factors leading to reconsidered sentences. The SCCSP expects to refine its reporting process in the coming year to provide the most thorough portrait possible of the use of reconsidered sentences in the State circuit courts.

Summary

Judicial departure rates within the Maryland sentencing guidelines have been tracked for almost 15 years. A study by the MCCSP over a 10-year period revealed that the aggregate departure rate across crime categories (45%) fell beyond 33%, a benchmark set by the MCCSP and adopted by the SCCSP. Departure rates for 2002 were lowest for drug offenses, followed by person offenses, and then property offenses. When judges departed from the recommended sentencing guidelines range (regardless of crime category), they generally sentenced below the recommended range.

The current analysis revealed that departure rates have risen about 7%. The aggregate rate rose from 13% to 20% between 2001 and 2002. Even so, aggregate rates of judicial departures remain well below a benchmark of 33%. All but three circuits experienced an increase in departure rates. The Second Circuit experienced the largest increase with 16%. The largest decrease in departure rates occurred in the Sixth Circuit with 5%.

Comparison of judicial departure rates by mode of disposition (plea agreement, plea without agreement, jury trial, or court trial) revealed that sentences imposed as a result of a plea agreement were more likely to fall within the recommended sentencing guidelines range. Upward departures were most common among cases resolved by a jury trial while downward departures were most common in plea, no agreement and bench trials.

The present analyses suggest that the aggregate departure rates have fluctuated over the past three years. Trends in aggregate departure rates, however, obscure variation at the circuit level, as evidenced by the range in departure rate percentages.

SCCSP PLANNED ACTIVITIES FOR 2004

While the work of the SCCSP is frequently driven by pressing policy issues and concerns that develop on short timeframes, the SCCSP does have several items on its action agenda for 2004. As mentioned, the Sentencing Guidelines Subcommittee will examine possible adjustments to the sentence ranges in the cell of each guidelines matrix, as well as considering inclusion of correctional options into the matrices. Criminal offenses and changes in the criminal code made by the General Assembly in 2004 will be incorporated into the guidelines and submitted to COMAR. The SCCSP will report data on the new items added to the sentencing guidelines worksheet, such as additional victim information and data on reporting of time to be served before parole consideration for violent offenses. New reports on sentencing-related issues and concerns will go up on the SCCSP web site on a regular basis for use by the public and State policymakers, including more "Sentencing FAX" reports and reports on the future effect of technological change on sentencing practices in Maryland and across the nation. The SCCSP will continue its use of DFGs, perhaps moving into other topic areas such as public priorities for the State sentencing policy agenda. SCCSP staff will further develop its training exercises and materials to ease and promote the

use of the guidelines in all circuit courts and oversee implementation of the worksheet process on-line, as previously discussed.

CONCLUSION

In 2003, the SCCSP continued classification of criminal offenses passed by the 2003 Maryland General Assembly; began reporting of new data on reconsidered sentences, types of pleas, and victims' involvement in sentencing; considered legislation concerning diminution credits; provided data and information to State agencies and media, including the Baltimore City Criminal Justice Coordinating Council and several of its component agencies; performed training sessions across the State for users of the guideline manuals and worksheets; completed a training video for guidelines use and began development of online applications of the process; continued use of its advisory worksheet workgroup composed of practitioners from around the State; piloted of "deliberative focus groups" on correctional options and disseminated a report on their findings and recommendations; worked with the State Family Violence Council on better data collection on felony domestic violence offenses; and posted research reports on topics related to sentencing and to criminal justice to provide a resource for State policymakers desiring thorough information for their decisions. The SCCSP's web site (www.msccsp.org) continues to be a valuable resource which provides easy access for citizens and policymakers to information concerning Maryland circuit court sentencing.

In 2002, the Maryland General Assembly passed HB1143, which required the State Commission on Criminal Sentencing Policy (SCCSP) to "review reductions or increases in original sentences" due to reconsideration of sentences in State circuit courts and to report those sentences in its Annual Report by offense type and circuit court. Only six cases were reported as reconsiderations in 2002. The SCCSP is working closely with the State Administrative Office of the Courts (AOC) to ensure that all circuit court judges know to submit the worksheets for reconsidered sentences and to try to compare its data with AOC data. In addition, the SCCSP has coordinated with the Maryland Bar Association in its report with the law schools at the University of Maryland and the University of Baltimore on the factors leading to reconsidered sentences. The SCCSP expects to refine its reporting process in the coming year to provide the most thorough portrait possible of the use of reconsidered sentences in the State circuit courts.

In 2004, the SCCSP will continue its review of the State sentencing guidelines and make necessary changes to ensure their consistency and coherence. It will maintain its training and information activities and its work with Maryland circuit courts to decrease rates of departure from the voluntary guidelines. The SCCSP will work diligently to fulfill its legislatively mandated mission of bringing proportional, nondisparate sentencing to the State criminal justice process and to the people of Maryland.