

Maryland State Commission on Criminal Sentencing Policy

Annual Report 2005



December 2005

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Honorable Raymond Thieme
Chairman

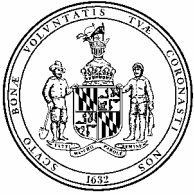
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MARYLAND



SCCSP

State Commission on Criminal Sentencing Policy

Chairman

Hon. Raymond G. Thieme

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Charles F. Wellford, Ph.D.

Executive Director

David A. Soulé, Ph.D.

December 2005

To: The Honorable Robert L. Ehrlich, Governor of Maryland
The Honorable Robert M. Bell, Chief Justice of Maryland
The Honorable Members of the General Assembly of Maryland
The Citizens of Maryland

Pursuant to Criminal Procedure Article, §6-209, the Maryland State Commission on Criminal Sentencing Policy is required to annually review sentencing policy and practice and report to the General Assembly. In compliance with this statutory mandate, we respectfully submit for your review the 2005 Annual Report of the State Commission on Criminal Sentencing Policy.

This report provides an overview of circuit court sentencing practices and trends in Maryland in fiscal year 2005. The report evaluates judicial compliance with the State's voluntary guidelines and summarizes the information submitted on the State's sentencing guidelines worksheets. A description of the Commission's work in the past year and planned activities for 2006 is also provided.

The Commission wishes to acknowledge and thank those agencies and individuals whose contributions to the guidelines enable us to produce this report. If you have any questions regarding this report, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Thieme", with a long horizontal flourish extending to the right.

Raymond G. Thieme
Chairman

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EXECUTIVE SUMMARY

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

In 2005, the SCCSP classified criminal offenses passed by the 2005 Maryland General Assembly; reviewed the classification of all current offense seriousness categories; continued reporting data on judicial departure rates, reconsidered sentences, types of pleas and victims' involvement in sentencing; provided data and information to State agencies and media; continued the development of a correctional population simulation model; and worked with the University of Maryland's Office of International and Executive Programs (OIEP) towards the completion of a web-based guidelines worksheet submission process. The SCCSP also submitted amendments to the Code of Maryland Regulations (COMAR) consisting of the classification of seriousness categories for all new and amended criminal penalties. An updated Guidelines Manual was published and distributed in April 2005 to reflect all changes to the guidelines and the seriousness categories for all offenses sentenced in the State's circuit courts. Finally, the SCCSP continued to update its web site (www.msccsp.org) to reflect changes to the guidelines, increase user capacity, and to provide current reports, allowing both interested citizens and policymakers to have better access to sentencing information from the circuit courts of Maryland.

The SCCSP receives Guidelines Sentencing Worksheets from all circuit courts in the State of Maryland, each representing a separate sentencing event. In fiscal year 2005 (July 1, 2004 – June 30, 2005), the SCCSP received almost 13,500 worksheets. These worksheets provide descriptive information on each convicted offense, the sentenced offender, the court's sentence, and victim impact. Additionally, data collected from the worksheets allow the SCCSP to determine how many cases fall within, below, or above the guidelines range. The Commission has been working towards a benchmark or standard compliance rate of 65% of cases sentenced within the guidelines range and 35% of cases below or above the range. In fiscal year 2005, the State's aggregate rate of compliance (75.8%) met this benchmark standard, reflecting a slight increase from the aggregate rate of 74% in fiscal year 2004. Six of the eight judicial circuits experienced a slight increase in compliance rates in fiscal year 2005, and all circuits met the benchmark rate of 65% compliance.

Judicial departures were least likely for person offenses, followed by property offenses and drug offenses. A comparison of judicial departure rates by type of disposition (plea agreement, plea with no agreement, bench trial, and jury trial) showed that departures were least likely in cases adjudicated by a plea agreement and most likely in cases settled by a plea with no agreement. Upward departures were most common among cases resolved by a jury trial, and downward departures were most common among cases adjudicated by a plea with no agreement. When departure rates by both crime category and

disposition were considered, the highest compliance rate was observed for person offenses adjudicated by a plea agreement. Drug offenses adjudicated by a plea with no agreement had the lowest compliance rate, and the majority of cases in this category were sentenced below the guidelines.

Unfortunately, the Commission is unable to fully or accurately report on sentences after reconsideration as a result of a continued failure of the courts to submit guidelines worksheets regarding these events. The SCCSP expects the introduction of the State's automated sentencing guidelines system will help streamline the reconsideration reporting process and will produce a system that is better equipped to capture data on sentence reconsideration.

In 2006, the SCCSP will introduce two advancements which will allow the Commission to provide more detailed information on sentencing policy and practice in the State. The SCCSP will complete the development of its correctional population simulation model to help the Commission assess recommendations for legislation or amendments to the sentencing guidelines. In addition, the SCCSP will begin utilizing an automated sentencing guidelines calculation and submission process. This on-line system should increase reporting of all circuit court guidelines cases, while also increasing the accuracy and reliability of submitted data. In addition to these two new developments, the SCCSP will continue to examine possible adjustments to the sentence ranges within each cell of the guidelines matrices. New reports on sentencing-related issues and concerns will be posted on the SCCSP website on a regular basis. Finally, 2006 will produce the first full year of data on the amount of victim economic loss in cases of theft and fraud related crimes. The SCCSP will continue to work diligently to fulfill its legislatively mandated mission to promote statewide fair, proportional and non-disparate sentencing policies and procedures.

THE STATE COMMISSION ON CRIMINAL SENTENCING POLICY (SCCSP)

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. 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 (Criminal Procedure Article, §6-201 through §6-214) set out six legislative goals for sentencing in Maryland, stating that:

1. Sentencing should be fair and proportional, and 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 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 the above legislative intentions.

SCCSP Composition

In 2005, the SCCSP was composed of 19 voting members, three of whom are ex officio members. These Commissioners are listed in Table 1 on the following page. The Chairman, the Honorable Raymond G. Thieme, who was appointed by the Governor in August 2003, continues to lead the State Commission on Criminal Sentencing Policy.

Table 1. 2005 Members of the State Commission on Criminal Sentencing Policy

<i>Members Appointed by the Governor</i>	
Chairman	Honorable Raymond G. Thieme
State's Attorney	Robert Riddle, Esquire (July 1, 2001 – September 30, 2005) Leonard C. Collins, Jr., Esquire (effective September 30, 2005)
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>	
Appellate Courts	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	Nancy S. Forster, Esquire
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, are 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 guidelines 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 from these worksheets, the SCCSP is expected 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 bed-space 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. Additionally, the SCCSP was selected 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.

In 2004, the General Assembly mandated the Commission to include an entry location on the sentencing guidelines worksheet to allow for the reporting of the specific dollar amount, when available, of the economic loss to the victim for crimes involving theft and related crimes under Title 7 of the Criminal Law Article and fraud and related crimes under Title 8 of the Criminal Law Article (Criminal Procedure Article, §6-214).

SCCSP ACTIVITIES IN 2005

In 2005, the Commission addressed an ambitious list of activities. The Commission's main activities, described below, offer some insight into the range of tasks addressed by the Commission in the past year.

Legislation considered. In 2005, the SCCSP reviewed all legislation passed by the General Assembly to determine additions and/or changes to criminal penalties. The SCCSP identified four bills which required the adoption of seriousness categories for new and/or altered criminal penalties. The following four bills created new or revised criminal offenses and respective penalties:

- House Bill 663 – Robbery by display of written instrument claiming possession of dangerous weapon [CR, §3-403(a)(2)]. The Commission voted to adopt a seriousness category of III for this offense.
- Senate Bill 47 – Assault on a law enforcement officer [CR, §3-203(c)]. The Commission voted to adopt a seriousness category of V for this offense.
- Senate Bill 122 – Retaliation related to felony violation of a Title 5 offense of the Criminal Law Article or crimes of violence [CR, §9-303(c)(2)] and intimidating or corrupting jurors in connection with a felony violation of a Title 5 offense or a crime of violence [CR, §9-305(c)(2)]. The Commission voted to adopt a seriousness category of III for both of these offenses.
- Senate Bill 488 – Use of or threat of force to coerce participation or prevent leaving gang [CR, §9-802] and use of or threat of force to coerce participation or prevent leaving gang in school or within 1000 feet of school property [CR, §9-803]. The Commission voted to adopt a seriousness category of VII for CR, §9-802 and a seriousness category of VI for CR, §9-803.

The changes were submitted to COMAR and were adopted effective November 24, 2005.

Offense type reclassifications. During the Commission's review of comparable offenses for new and/or revised offenses passed by the Legislature in 2005, three existing offenses were identified as being improperly categorized by offense type. At the June 27, 2005 meeting of the Commission, the SCCSP approved the reclassification of the following offenses:

- Falsely representing self as a lawyer [BO, §10-602] – reclassified from a property to a person offense.
- Altering the results of a drug or alcohol screening test, 1st and 2nd offense [CR, §10-111] – reclassified from drug to property offenses.

The changes were submitted to COMAR and were adopted effective November 24, 2005.

Seriousness category reclassifications. In its continued review of seriousness categories for all criminal offenses sentenced in the State's circuit courts, the SCCSP identified three offenses that the Commission determined were not currently assigned a seriousness category consistent with those for "similar" offenses with "like" maximum penalties. By majority vote, the Commission adopted changes to the seriousness categories for the following offenses:

- Extortion by false accusation [CR, §3-704] – seriousness category was changed from VI to V.
- Unlawful wearing, carrying, or transporting a handgun with deliberate purpose to kill [CR, §4-203(c)(4)(i)2B] – seriousness category was changed from V to III.
- Straw purchase of a regulated firearm [PS, §5-136; PS, §5-140; PS, §5-141] – seriousness category was changed from V to IV.

These changes were submitted to COMAR, and their adoption is expected in February 2006.

COMAR. The SCCSP prepared for submission into COMAR its decisions on the classification of seriousness categories for all new and revised criminal offenses passed by the General Assembly in 2005 in addition to the reclassification of seriousness categories for existing criminal offenses. The addition of an entry location on the guidelines worksheet for amount of economic loss to the victim in theft and fraud related cases, and the respective revisions to the guidelines worksheet and Guidelines Manual were adopted on March 28, 2005.

Training and materials. SCCSP staff continued in its core work of supplying training and materials on the sentencing guidelines throughout the State. In April 2005, the SCCSP produced and distributed an updated version of the sentencing guidelines worksheet, as well as the Guidelines Manual to reflect the addition of the economic loss section to the guidelines worksheet (House Bill 918, 2004) and to indicate all changes to the guidelines since the previous edition of the Manual. A copy of the revised Guidelines Worksheet is included in Appendix A of this report. In November 2005, an updated guidelines offense table was produced to reflect the Commission's adoption of seriousness categories for new and/or revised offenses passed by the General Assembly in 2005. Additionally, the SCCSP staff distributed a brochure entitled, "Update on the Completion of Guidelines Worksheets" (April 2005) to assist in the guidelines worksheet completion process. This brochure outlines some of the most common omissions and/or mistakes found on the guidelines worksheet.

The SCCSP staff also produced a training presentation for the New Trial Judges Orientation held in May 2005. This presentation provided new judges an overview of the guidelines system and included materials to guide their submission of worksheets for all guidelines cases. Additionally, Dr. Soulé attended two meetings of the Conference of Circuit Judges in 2005 to review the upcoming activities of the Commission and to discuss guidelines compliance rates for individual jurisdictions. Dr. Soulé has begun meeting with administrative judges in individual jurisdictions to review the compliance analysis.

Guidelines Subcommittee work. The SCCSP's subcommittee on sentencing guidelines was responsible for the initial review and consideration of the COMAR submissions described above, and later adopted by the full Commission. In addition, the subcommittee reviewed sentencing guidelines compliance rates within each jurisdiction and by type of offense, as well as completing a review of the guidelines worksheet submission process. The subcommittee conducted a detailed analysis of sentences within the drug matrix and produced a series of compliance reports for these offenses for each individual jurisdiction. Furthermore, the subcommittee reviewed the seriousness category for all criminal offenses sentenced in the State circuit courts and made recommendations for the reclassification of the offenses described above.

Research and technological advancements. In February 2005, the SCCSP finalized a contract with Applied Research Services, Inc. (ARS) to develop a sentencing/correctional simulation model for the State of Maryland. The model will include a discrete-event simulation software application to mimic the flow of offenders into, through, and out of the Maryland judicial and correctional system. The simulation model will provide the ability to analyze the impact of changes in operating policies, sentencing practices, post release practices, and external system pressures on the system. The initial phase of the model is expected to be completed by January 2006. Additionally, the SCCSP collaborated with the University of Maryland's Office of International and Executive Programs (OIEP) to continue the development of an automated (web-based) sentencing guidelines system. SCCSP staff has provided continued feedback to OIEP programmers to streamline the automated system which is expected to increase the number of cases for which worksheets are received, while substantially reducing data error and omissions.

Review of public access to court records. The SCCSP reviewed the June 15, 2005 decision of the Court of Appeals which reiterated the need for Maryland court data to be made available electronically. The Commission expressed its dissatisfaction with the decision and agreed to draft a letter stating the Commission's opposition to the electronic availability of the Judicial Information Systems (JIS) data. On July 5, 2005, the SCCSP chairman, Judge Thieme, sent a letter to both the Court of Appeals and the Administrative Office of the Courts respectfully requesting a reconsideration of the decision regarding the electronic availability of court records.

Public comments hearing. On September 12, 2005, the SCCSP held its annual public comments hearing at the Judiciary Training Center in Annapolis, MD. The Commission sent out an invitation to various key stakeholders throughout the State and announced the meeting in the Maryland Register to invite all interested parties to discuss any topic related to sentencing policy and practice in the State. A brief overview of the guidelines system and overall compliance rates was presented by the Commission staff. In addition, the *Campaign for Treatment, Not Incarceration* offered a presentation on recommendations for sentencing non-violent drug offenders.

Correctional options inventory. In 2005, the SCCSP staff continued the process of creating a statewide inventory of all available "front-end" corrections options services. The SCCSP began updating a similar inventory that was completed in 2001 by contacting local offices to develop a jurisdiction-specific list of resources available to judges when they make recommendations for correctional options. The updated inventory will be completed during the upcoming year.

Website updates. Updates to the SCCSP website (www.msccsp.org) were made throughout the year to reflect changes to the guidelines. In addition, more user-friendly features, such as the ability to electronically submit requests for additional guidelines worksheets as well as requests for SCCSP data, were added in fiscal year 2005. Finally, the SCCSP continued to post periodic reports entitled "Sentencing Fax," which are generated by utilizing data submitted on the guidelines worksheets. Topics examined in 2005 include the length of incarceration for offenders convicted of crimes of violence by circuit and mode of adjudication, an overview of victim impact in the sentencing process, and the most common offense convictions by circuit and crime category.

SENTENCES REPORTED IN FY 2005

The SCCSP has been charged with the responsibility of collecting sentencing guidelines worksheets and automating the information in order to monitor sentencing practice and adopt changes to the sentencing guideline matrices. The Administrative Office of the Courts (AOC) compiled this data between July 1983 and June 2000. Beginning in July 2000, the SCCSP assumed the responsibility of compiling this data from worksheets. Since that time, the SCCSP has continued to update the data and check for errors. In the process, corrections have been made to the database and additional worksheets have been located and incorporated which may affect the overall totals reported in previous reports.

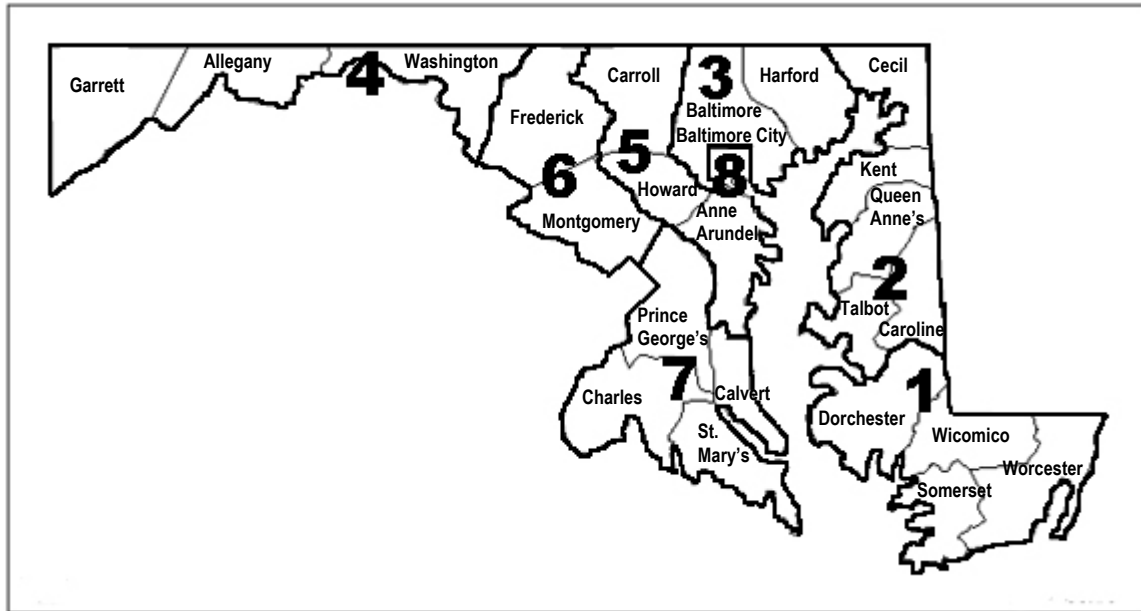
Worksheets Received

The number of worksheets received by the SCCSP increased from 13,055 in fiscal year 2004 to 13,394 in fiscal year 2005. Table 2 provides a breakdown of the number and percentage of worksheets received in fiscal year 2005 by circuit. The jurisdictions in each circuit are shown in Figure 1. The largest number of guidelines worksheets (42%) was received from the Eighth Circuit (Baltimore City), while the smallest number (3.4%) was received from the Fourth Circuit (Allegany, Garrett, and Washington Counties).

Table 2. Number and Percentage of Worksheets Submitted by Circuit, Fiscal Year 2005

Circuit	Number of Worksheets Submitted	Percent of Total Worksheets Submitted
1	617	4.6%
2	469	3.5%
3	1,574	11.8%
4	459	3.4%
5	1,176	8.8%
6	839	6.3%
7	2,635	19.7%
8	5,625	42.0%
TOTAL	13,394	100.0%

Figure 1. Maryland Judicial Circuits



Case Characteristics

Figures 2 through 4 summarize the descriptive characteristics from the 13,394 worksheets submitted for offenders sentenced in fiscal year 2005. Most were male (87.7%) and African-American (75.6%). The average age of offenders at date of sentencing was 30 years. The youngest offender was 14, while the oldest was 81 years of age. Approximately 21% of offenders were under 21 years of age; 38% were 21-30 years old; 25% were 31-40 years old; and the remaining 16% were 41 years or older.

Figure 2. Distribution of Cases by Gender of Offender, Fiscal Year 2005

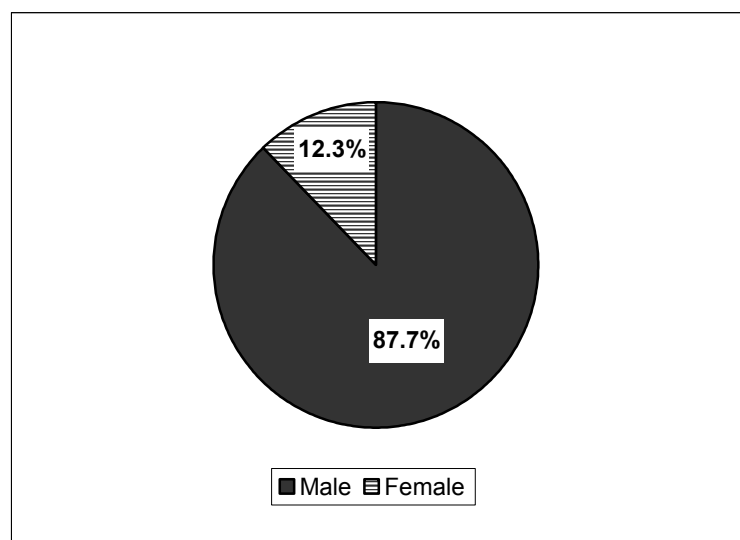


Figure 3. Distribution of Cases by Race of Offender, Fiscal Year 2005

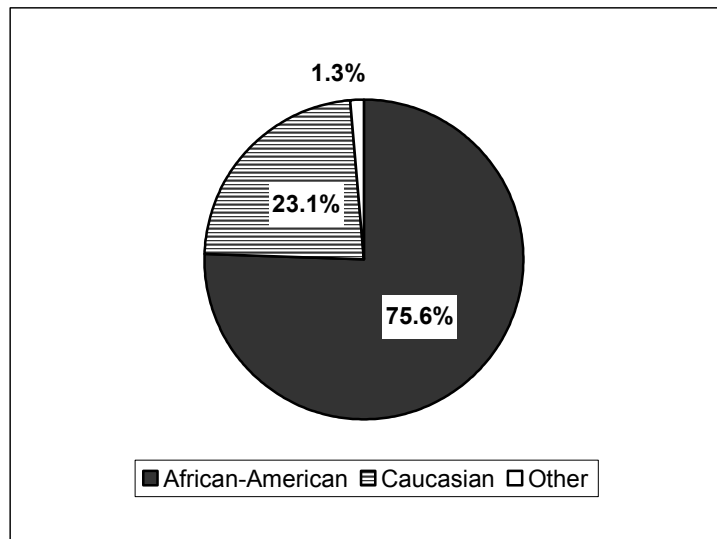


Figure 4. Distribution of Cases by Age of Offender, Fiscal Year 2005

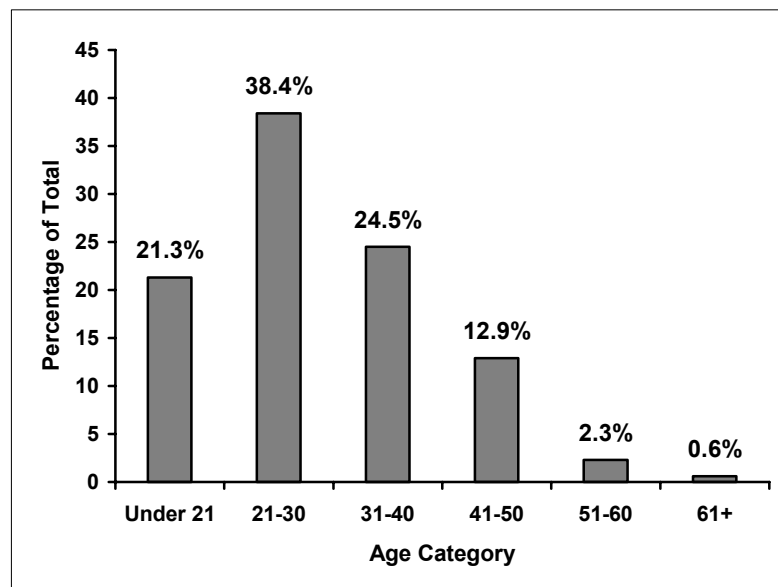
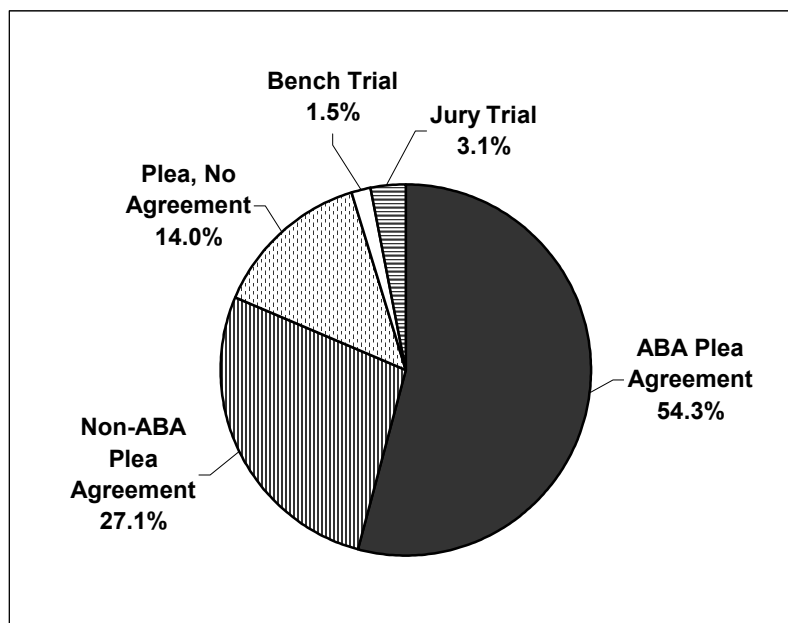


Figure 5 provides a breakdown of cases by disposition type. The vast majority of cases were resolved by either an American Bar Association (ABA) plea agreement (54.3%) or a non-ABA plea agreement (27.1%). An additional 14% were resolved by a plea with no agreement, and 4.6% of cases were resolved by either a bench or jury trial (1.5% and 3.1%, respectively). Note that the total number of cases on which these percentages are based excludes reconsideration (N=45), review (N=1), and probation revocation cases (N=178).¹

Figure 5. Distribution of Cases by Disposition, Fiscal Year 2005



¹ Of the 13,394 guidelines worksheets received in FY 2005, the disposition was missing for 2,222 worksheets (16.6% of all cases). Therefore, the distribution of cases by disposition is based on a sample of 10,948 worksheets.

JUDICIAL DEPARTURE FROM MARYLAND'S VOLUNTARY SENTENCING GUIDELINES

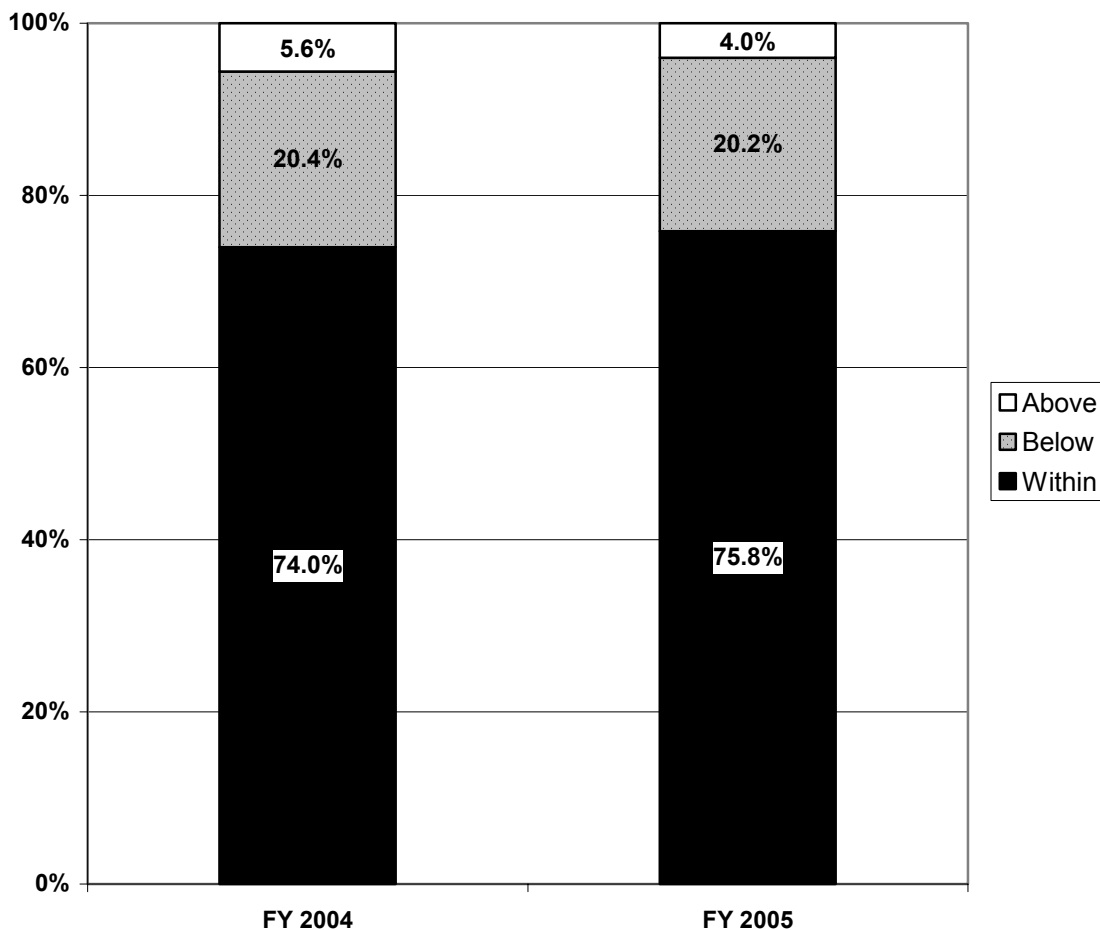
The SCCSP is mandated to examine judicial departures based on data extracted from the sentencing guidelines worksheets submitted after each defendant is sentenced in circuit court. The following provides a detailed examination of judicial compliance and departure from Maryland's voluntary sentencing guidelines.

Judicial Departure Rates Overall

Historically, judicial departure rates from the applicable guidelines range have been high. For example, over a ten year period (1987-1996), the aggregate departure rate across all crime categories was 45%. During this period of time, departures from the applicable guidelines range were more likely to be below that range. In 2001, the SCCSP determined that such frequent downward departures were partially the result of sentences to correctional options programs (e.g., substance abuse treatment, home detention). In recognition of the policy interests in promoting the use of correctional options, the Commission voted to deem all such sentences compliant with the guidelines provided that the initial sentence plus any suspended sentence falls within or above the guidelines range and the case does not include a crime of violence, sexual child abuse, child abuse with death, or escape. Similarly, all sentences pursuant to an American Bar Association (ABA) plea agreement were deemed compliant as they represent an accurate reflection of the consensus of the parties and the court within the specific community they represent (COMAR 14.22.01.17). As a result of these changes, guidelines departure rates have met the Commission's benchmark standard of 65% compliance since the change in calculating guidelines compliance was implemented in fiscal year 2002.

Figure 6 contains a breakdown of the overall guidelines departure rates for fiscal years 2004 and 2005 based on the sentence for the controlling offense in each case (i.e., the most serious offense). The figure indicates that in both years, the overall rate of compliance exceeded the Commission's goal of 65% compliance. In addition, over the past two years aggregate departure rates have decreased 1.8%.

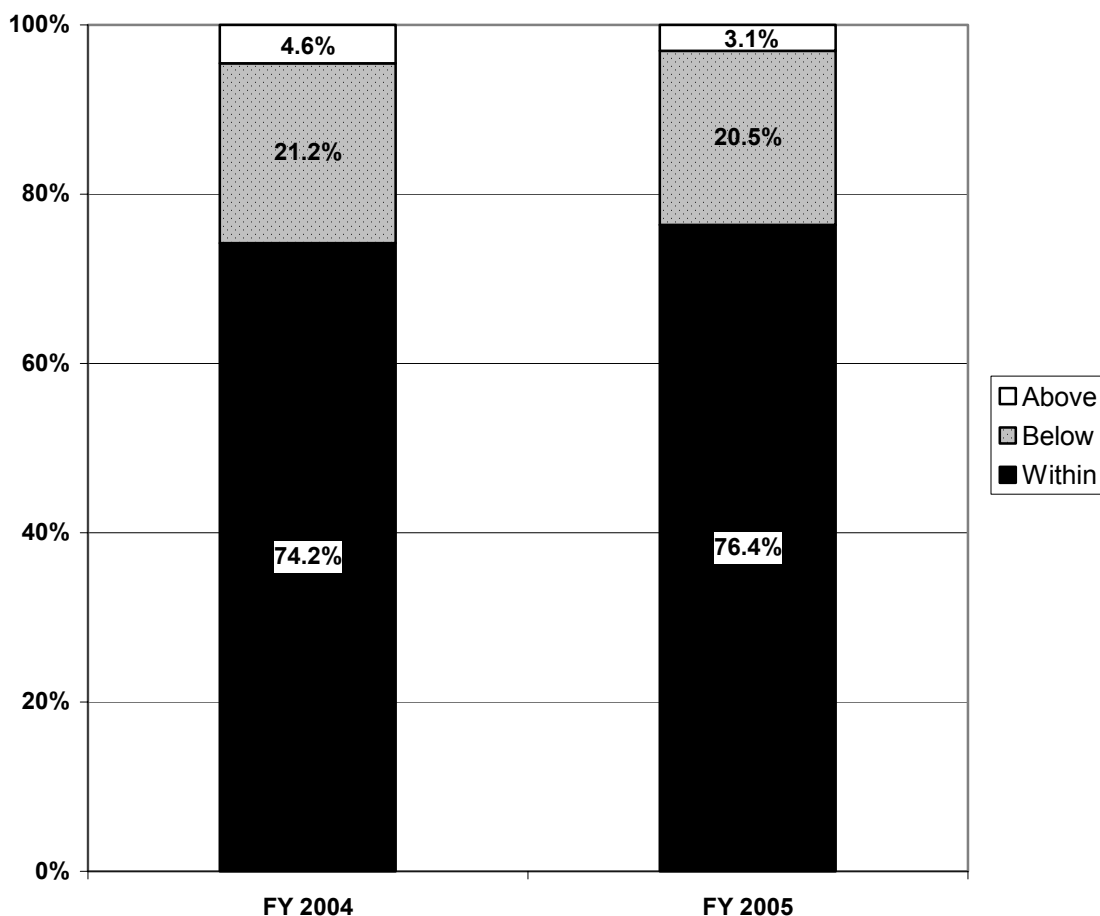
**Figure 6. Overall Sentencing Guidelines Departures by Fiscal Year
(Based on Controlling Offenses)**



Analyses of judicial departures in Maryland have traditionally focused on sentences for single count convictions because they permit the most direct comparison of departures by crime category and by offense type, within the applicable 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. Thus, the figures from this point forward focus on sentences for single count convictions during fiscal years 2004 and 2005. Of the 13,394 sentencing guidelines worksheets submitted to the SCCSP in 2005, 9,528 (71.1%) contained single count convictions.

Figure 7 provides a breakdown of the overall guidelines departure rates for fiscal years 2004 and 2005 based on single count convictions. The rates are similar to those above. In both years, the overall rate of compliance exceeded the Commission's goal of 65% compliance. In addition, the aggregate departure rate decreased slightly from 25.8% in fiscal year 2004 to 23.6% in fiscal year 2005. When departures occurred, they were more often below the guidelines rather than above.

**Figure 7. Overall Sentencing Guidelines Departures by Fiscal Year
(Based on Single Count Convictions)**

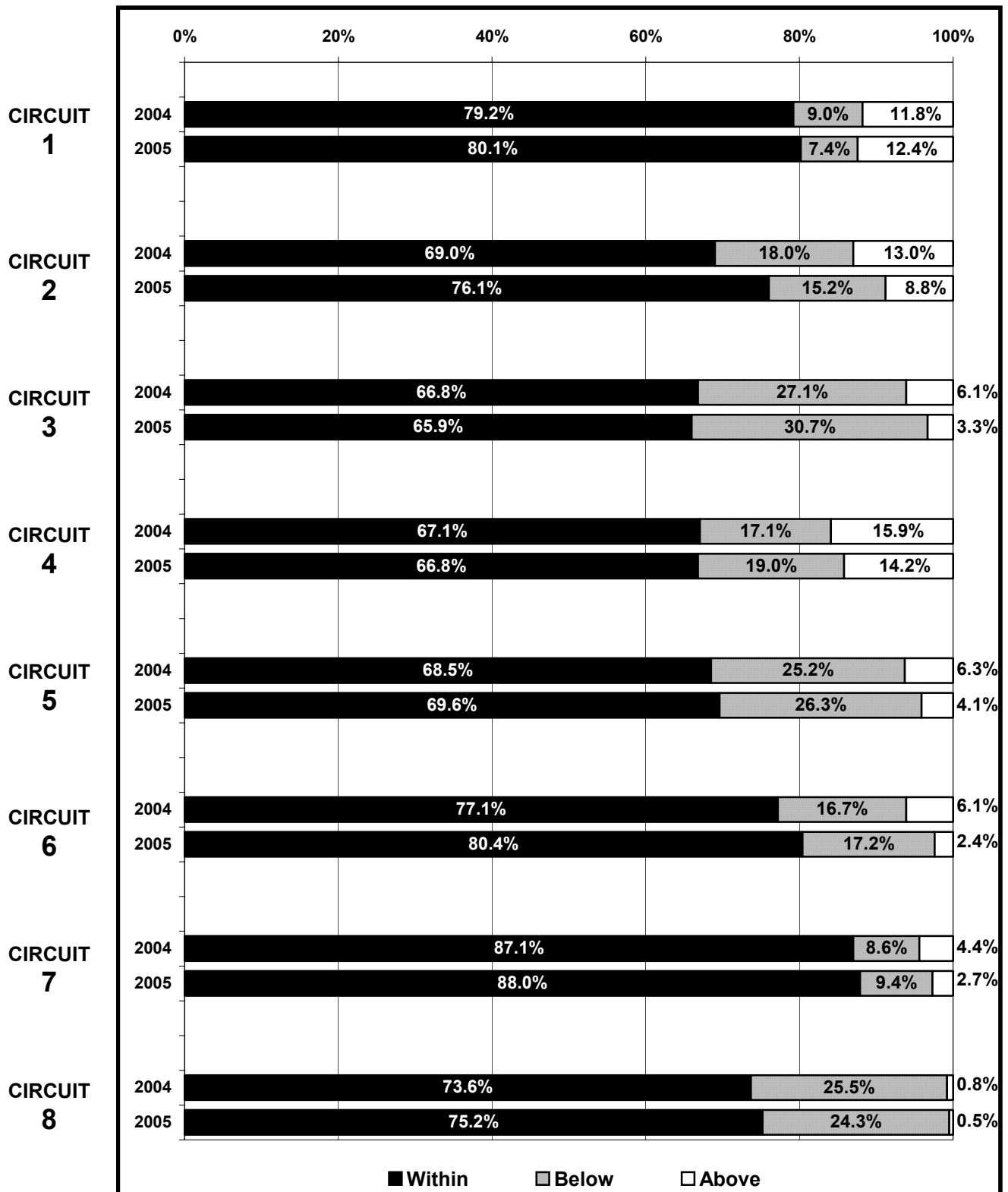


Judicial Departure Rates by Circuit

As shown in Figure 8, all circuits met the 65% compliance benchmark, and nearly every circuit increased their compliance rate in fiscal year 2005. Only the Third and Fourth Circuits decreased their compliance rate, but in both cases the decrease was less than 1%. The Seventh Circuit continued to lead all circuits with the highest compliance rate of 88%, followed by the Sixth Circuit (80.4%) and the First Circuit (80.1%). The largest increase in the compliance rate occurred in the Second Circuit (7.1%). It is important to note that circuits with a high percentage of cases disposed by an ABA plea agreement are more likely to have higher compliance rates. For example, in fiscal year 2005, the Seventh Circuit had both the highest compliance rate and the highest percentage of cases resolved by an ABA plea agreement (76.3%).²

² Sentencing guidelines data indicate that the overall compliance rate is in part related to the number of cases adjudicated by an ABA plea agreement. For example, data from the past four fiscal years show that changes from year to year in the percentage of cases resolved via ABA plea correspond to changes in the percentage of compliant cases.

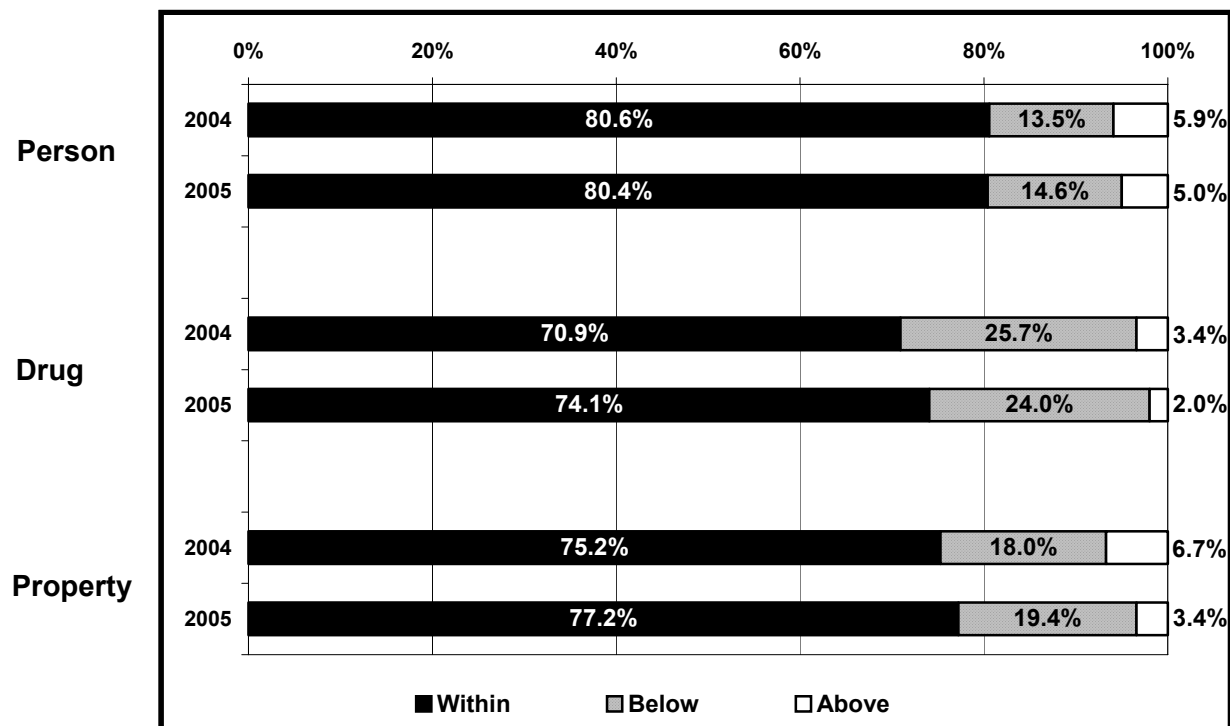
Figure 8. Sentencing Guidelines Departures by Circuit and Fiscal Year



Judicial Departure Rates by Crime Category

Figure 9 shows judicial departures by crime category during the past two fiscal years. In both years, person offenses experienced the lowest departure rate, and the compliance rate for person offenses in fiscal year 2005 (80.4%) was nearly identical to that of fiscal year 2004 (80.6%). Between fiscal years 2004 and 2005, the compliance rate for drug offenses increased from 70.9% to 74.1%. A similar pattern was observed for property offenses. The 65% benchmark was met for all three crime categories in both fiscal years.³

Figure 9. Sentencing Guidelines Departures by Crime Category and Fiscal Year

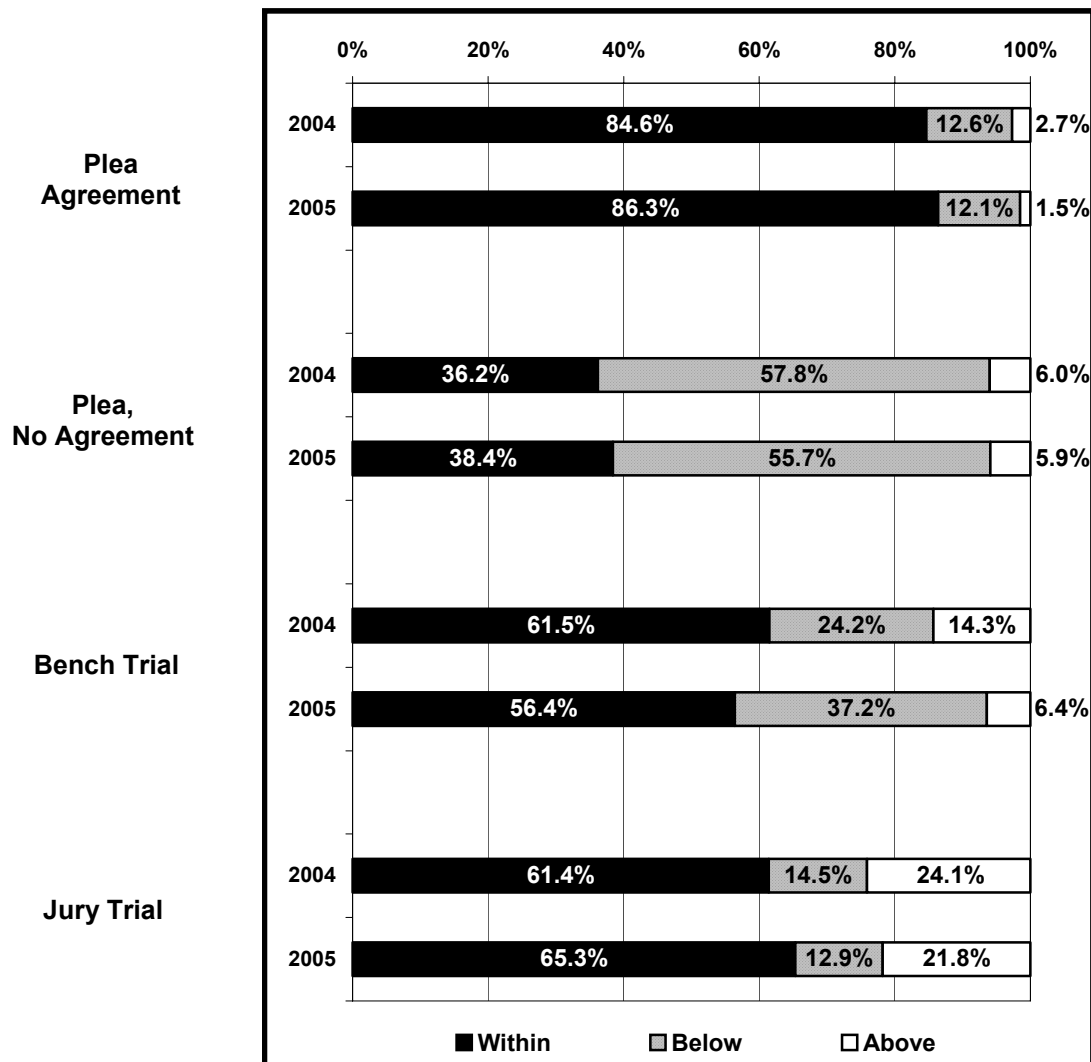


³ See Appendix B for sentencing guidelines departure rates for the five most common offenses in each crime category.

Judicial Departure Rates by Type of Disposition

Figure 10 examines the extent to which judicial departure rates varied by type of disposition (i.e., plea agreement, plea with no agreement, bench trial, and jury trial). Over the past two fiscal years, compliance rates increased slightly for cases disposed by a plea agreement, plea with no agreement, and jury trial. In contrast, the compliance rate for cases adjudicated by a bench trial decreased from 61.5% in 2004 to 56.4% in 2005. The highest compliance rate in fiscal year 2005 was observed for plea agreements, with 86.3% of such sentences falling within the prescribed guidelines range. This is not surprising given that the plea agreement category includes ABA pleas, and all ABA pleas have been defined as compliant since July 2001. Jury trials were also above the 65% compliance benchmark, but by a much smaller margin with a compliance rate 65.3%. Cases that were adjudicated by a plea with no agreement or bench trial fell short of the benchmark. In these two disposition categories, downward departures were more frequent than upward departures.

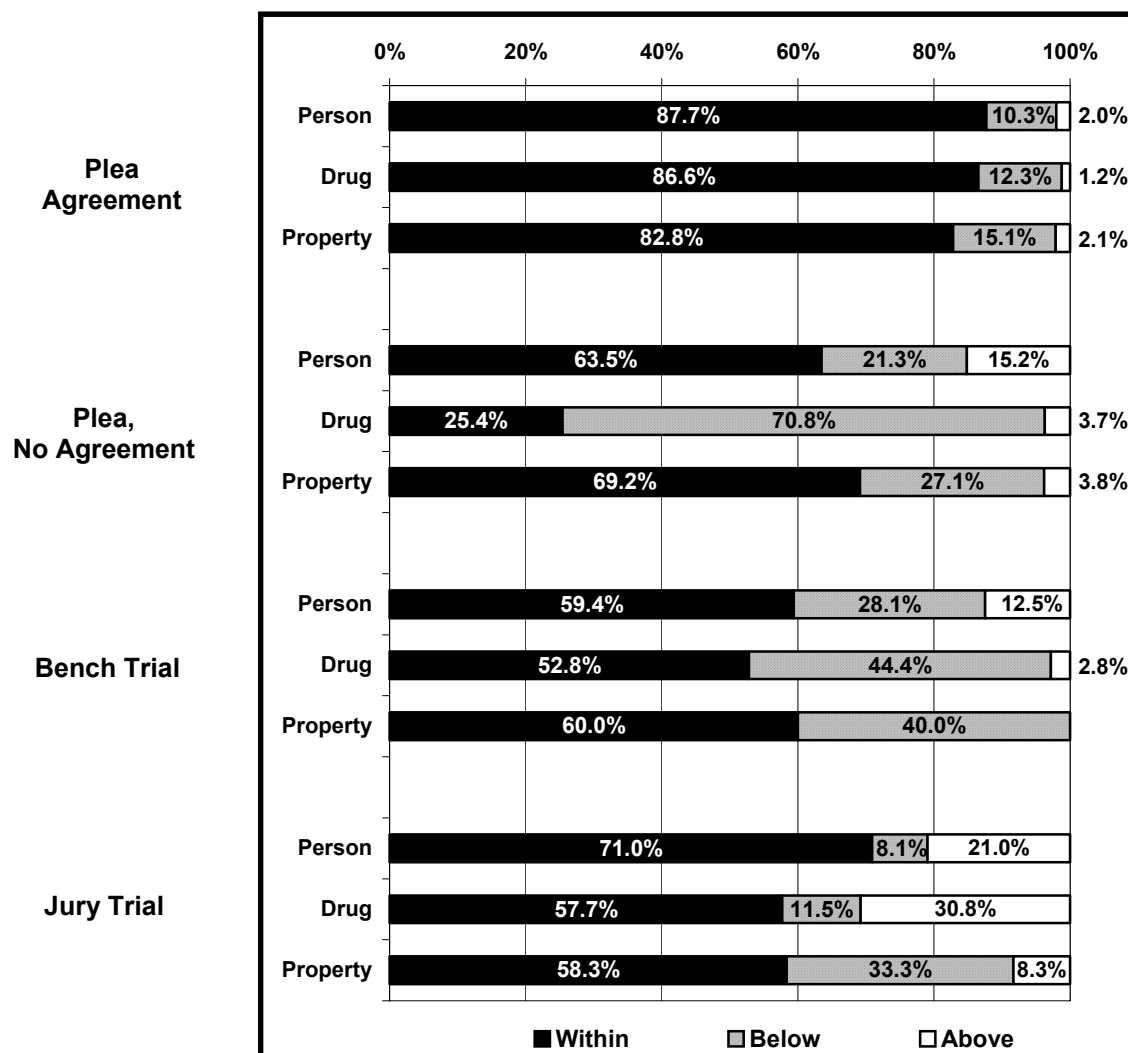
Figure 10. Sentencing Guidelines Departures by Type of Disposition and Fiscal Year



Judicial Departure Rates by Crime Category and Disposition

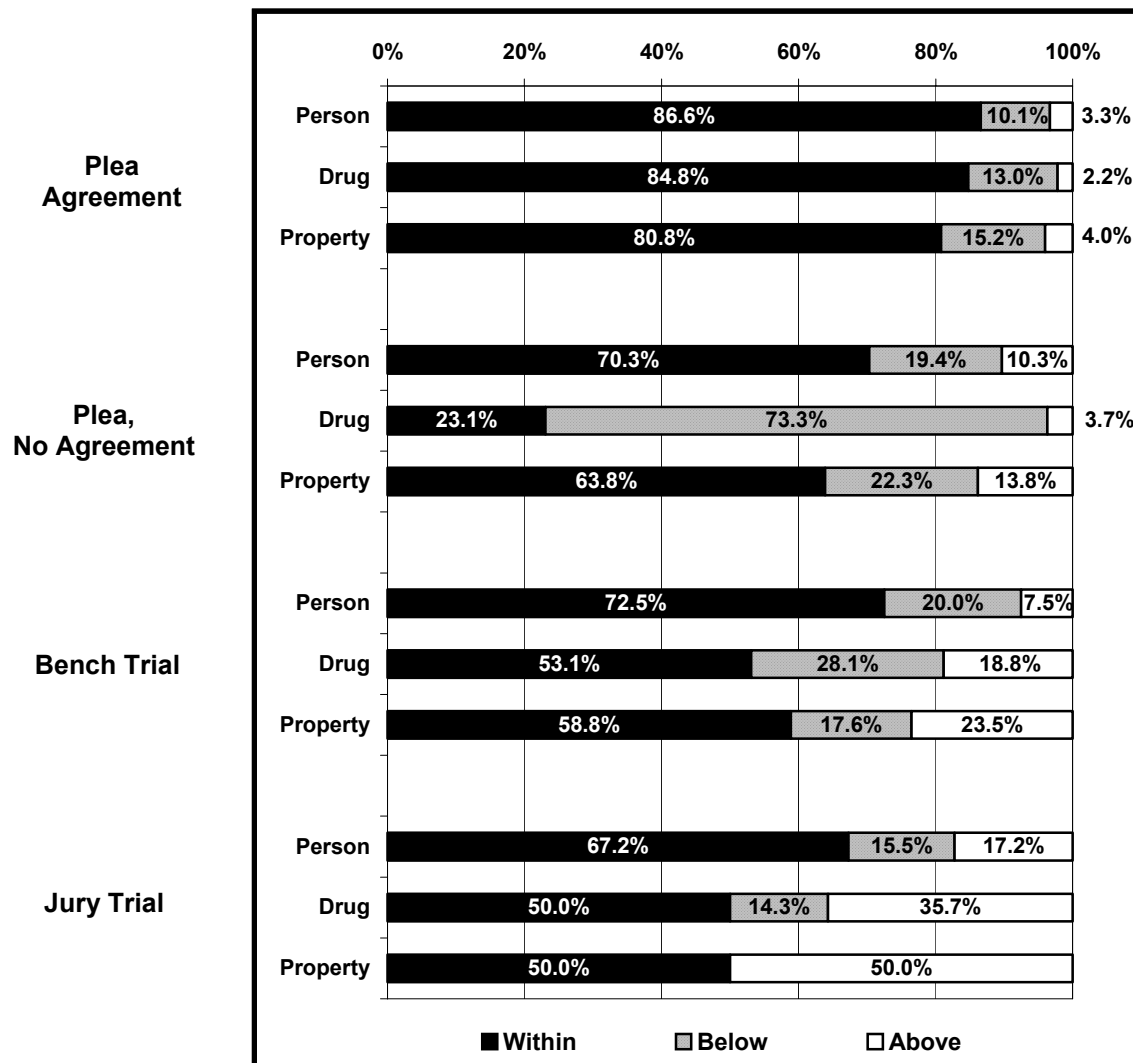
Departure rates by crime category and disposition are displayed in Figure 11 for fiscal year 2005 and in Figure 12 for fiscal year 2004. Looking first at the findings for 2005, the highest compliance rates were observed for person, drug, and property offenses adjudicated by a plea agreement (87.7%, 86.6%, and 82.8%, respectively). The only other compliance rates to meet the benchmark of 65% were those for property offenses adjudicated by a plea with no agreement (69.2%) and person offenses adjudicated by a jury trial (71%). Drug offenses adjudicated by a plea with no agreement had the lowest compliance rate (25.4%), and the majority of cases in this category were sentenced below the guidelines (70.8%). For all but two of the offense/disposition categories in Figure 11, downward departures were more common than upward departures. Only person and drug offense cases adjudicated by a jury trial were more likely to be sentenced above the recommended guidelines range than below the recommended guidelines range.

Figure 11. Sentencing Guidelines Departures by Crime Category and Disposition, Fiscal Year 2005



Similar to the findings for fiscal year 2005, the highest compliance rates for fiscal year 2004 were observed for person, drug, and property offenses adjudicated by a plea agreement (86.6%, 84.8%, and 80.8%, respectively). The only other compliance rates to meet the benchmark of 65% were those for the remaining person offenses (i.e., person offenses disposed by a plea with no agreement, bench trial, and jury trial).

Figure 12. Sentencing Guidelines Departures by Crime Category and Disposition, Fiscal Year 2004



A comparison of Figures 11 and 12 indicates that compliance rates dropped from above the 65% benchmark in fiscal year 2004 to below the 65% benchmark in fiscal year 2005 for person offenses settled by a plea with no agreement and person offenses adjudicated by a bench trial. Conversely, the compliance rate rose from below the 65% benchmark in fiscal year 2004 to above the 65% benchmark in fiscal year 2005 for property offenses disposed by a plea with no agreement. Finally, departures for property offenses adjudicated by a bench or jury trial were more often below the recommended guidelines range in fiscal year 2005, whereas departures for property offenses adjudicated by a bench or jury trial were more often above the recommended range in fiscal year 2004.

Taken together, Figures 11 and 12 suggest that when departures from the guidelines occurred, sentences were more likely to fall below the recommended guidelines range regardless of the type of offense and mode of disposition, with one exception -- departures in cases adjudicated by a jury trial were generally more likely to exceed the recommended guidelines range.

Departure Reasons

COMAR regulation 14.22.01.05(A) directs the sentencing judge to document the reason or reasons for imposing a sentence outside of the recommended guidelines range on the guidelines worksheet. However, in 61% of the fiscal year 2005 cases that resulted in a departure from the guidelines, the reason(s) for departure was not provided. Of those cases where a reason was provided, Tables 3 and 4 display the reasons given for departures from the guidelines. Table 3 provides a rank order of the mitigating reasons judges provided for cases where the sentence resulted in a downward departure. The most commonly cited reasons for downward departures were: 1) the parties reached a plea agreement that called for a reduced sentence (41.4%); 2) other circumstances of the crime and/or offenders do not warrant a sentence within the guidelines (17.2%); 3) a recommendation of the State's Attorney or Division of Parole and Probation (14.5%); and 4) the offender's commitment to substance abuse treatment or other therapeutic program (11.2%). When a written description of the "other circumstances" was provided, it most often included the following: offender's prior criminal record not significant; offender has medical or mental health problems; weak facts of the case or questionable stop, search, and seizure issues; offender currently serving time on another charge; and most jury trials end in a not guilty verdict.⁴

Table 3. Departure Reasons for Cases Below the Guidelines, Fiscal Year 2005*

Mitigating Reasons	%
The parties reached a plea agreement that called for a reduced sentence.	41.4%
Other circumstances of the crime and/or offenders do not warrant a sentence within the guidelines.	17.2%
Recommendation of the State's Attorney or Division of Parole and Probation.	14.5%
Offender's commitment to substance abuse treatment or other therapeutic program.	11.2%
Offender had diminished capability for judgment.	7.6%
Offender's minor role in the offense.	4.2%
Offender made restorative efforts after the offense.	2.4%
Victim's participation in the offense lessens the offender's culpability.	1.2%
Offender was influenced by coercion or duress.	0.2%

* Represents the most frequently cited responses given by judges based on a list provided on the Sentencing Guidelines Departure Bench Card. Multiple reasons may be cited in each case.

⁴ All of the cases where the judge noted that most jury trials end in a not guilty verdict are from the same jurisdiction.

Table 4 provides a rank order of the aggravating reasons judges provided for cases where the sentence resulted in an upward departure. The most commonly cited reasons for departures above the guidelines were: 1) other circumstances of the crime and/or offenders do not warrant a sentence within the guidelines (29.5%); 2) a recommendation of State's Attorney or Division of Parole and Probation (17.9%); 3) the offender's major role in the offense (11.6%); and 4) special circumstances of the victim (10.4%). When a written description of the "other circumstances" was provided, the prior record of the offender was the most frequently cited reason for the decision to depart above the recommended guidelines range.

Table 4. Departure Reasons for Cases Above the Guidelines, Fiscal Year 2005

Aggravating Reasons	%
Other circumstances of the crime and/or offenders do not warrant a sentence within the guidelines.	29.5%
Recommendation of the State's Attorney or Division of Parole and Probation.	17.9%
Offender's major role in the offense.	11.6%
Special circumstances of the victim.	10.4%
The level of harm was excessive.	9.2%
The vicious or heinous nature of the conduct.	8.7%
Offender's significant participation in major controlled substance offense.	7.5%
Offender exploited a position of trust.	4.6%
Offender committed a "white collar" offense.	0.6%

Report on Adjustments from Reconsidered Sentences

House Bill 1143 (2002) mandated that the annual report of the SCCSP shall "review reductions or increases in original sentences that have occurred because of reconsiderations of sentences imposed under §14-101 of the Criminal Law Article" and "categorize information on the number of reconsiderations of sentences by crimes as listed in §14-101 of the Criminal Law Article and by judicial circuit."

Although HB 1143 (2002) specifically called for the review of reconsidered sentences for "crimes of violence" as defined in §14-101 of the Criminal Law Article, Annotated Code of Maryland, Table 5 reports the submissions of all reconsidered sentences received by the SCCSP for fiscal year 2005. The table is based on reconsidered sentences for 45 offenders and 72 offenses. These were the only reconsidered sentences submitted to the SCCSP during the last fiscal year. As illustrated in Table 5, robbery with a deadly weapon [CR, §3-403(a)] and burglary, 1st degree [CR, §6-202(a)] were the most commonly reconsidered offenses in fiscal year 2005.

Table 5. Case Reconsiderations, Fiscal Year 2005*

Circuit	Offense	# of Cases
FIRST	Sex Offense 3	1
SEVENTH	Assault, 1 st Degree	1
	Assault, 2 nd Degree	5
	Assault with Intent to Rob	1
	Restrictions on Sale, Transfer, and Possession of Pistols and Revolvers	4
	Handgun Use in Felony or COV	2
	Kidnapping	1
	Murder, 1 st Degree	2
	Carjacking, Unarmed	1
	Carjacking, Armed	1
	Robbery with Deadly or Dangerous Weapon	9
	Robbery	4
	CDS Distribution (Marijuana)	1
	CDS Distribution (Cocaine)	6
	CDS Distribution (Heroin)	1
	CDS Distribution (PCP)	2
	CDS Distribution (Other Narcotic)	1
	CDS Distribution (Narcotics and Hallucinogenics – Drug Not Identified)	2
	CDS Possession (Marijuana)	1
	CDS Possession (Other)	1
	Burglary, 1 st Degree	9
	Burglary, 4 th Degree	1
	Destruction of Property, Less Than \$500	1
	Theft, Less Than \$500	1
	Theft, \$500 or Greater	1
	Theft, Motor Vehicle	1
	Unlawful Use of Goods	1
	Unknown	6
EIGHTH	Handgun Use in Felony or COV	1
	Murder, 2 nd Degree, Attempted	1
	Rape, 1 st Degree	1
	CDS Distribution (Heroin)	1

* Table 5 is based on reconsidered sentences for 45 offenders and 72 offenses.

Since the SCCSP began collecting information on reconsidered cases in 2002, worksheets for these cases have continuously been underreported to the SCCSP preventing a complete analysis of their impact. Fiscal year 2005 had a slight increase in the actual number of reconsidered sentences reported to the SCCSP compared to fiscal year 2004, when reconsidered sentences for 43 offenses were reported. The SCCSP will continue to further examine the reporting process to find a way to capture the data on reconsiderations so that the Commission can provide an accurate portrait of the use of reconsidered sentences in the State circuit courts. It is the belief of the SCCSP that the initiation of the automated sentencing guidelines system will make it easier for the State circuit courts to submit worksheets for reconsidered cases.

Summary

The overall guidelines compliance rate in fiscal year 2005 exceeded the Commission's goal of 65% compliance and increased slightly over the compliance rate in fiscal year 2004. When departures occurred, they were more often below the guidelines rather than above. Between fiscal years 2004 and 2005, six of the eight judicial circuits experienced an increase in guidelines compliance rates, and all circuits met the benchmark rate of 65% compliance.

Departures were least likely for person offenses, followed by property offenses and drug offenses. A comparison of judicial departure rates by type of disposition (plea agreement, plea with no agreement, bench trial, and jury trial) showed that departures were least likely in cases adjudicated by a plea agreement and most likely in cases settled by a plea with no agreement. Upward departures were most common among cases resolved by a jury trial, and downward departures were most common among cases adjudicated by a plea with no agreement. When departure rates by both crime category and disposition were considered, the highest compliance rate was observed for person offenses adjudicated by a plea agreement. Drug offenses adjudicated by a plea with no agreement had the lowest compliance rate, and the majority of cases in this category were sentenced below the guidelines.

An examination of the reasons for departure from the guidelines in fiscal year 2005 revealed the most commonly cited mitigating reason for departures below the guidelines was that the parties reached a plea agreement that called for a reduced sentence. Other circumstances of the crime and/or offender was the second most common mitigating reason and was also the most common aggravating reason for departures above the guidelines. The second most common aggravating reason was a recommendation of the State's Attorney or Division of Parole and Probation. When sentences departed from the recommended guidelines range, judges failed to note the reason for departure in the majority of cases sentenced in fiscal year 2005. Since knowing the reason for departure is crucial to providing a comprehensive review of the State's guidelines system, the Commission will explore further options for increasing judicial compliance with this mandate.

SCCSP PLANNED ACTIVITIES FOR 2006

The SCCSP has several activities and goals planned for the 2006 agenda. The SCCSP will continue to perform typical duties such as reviewing all criminal offenses and changes in the criminal code passed by the General Assembly during the upcoming legislative session, classifying the seriousness categories for these offenses, and submitting amendments to COMAR. The SCCSP staff will maintain an updated Guidelines Manual which will reflect any additions and/or changes to the classification of these respective offenses. Additionally, the Commission staff will utilize data provided by the Administrative Office of the Courts (AOC) to develop a system for tracking circuit court cases with missing guidelines worksheets. The Sentencing Guidelines Subcommittee will continue to examine and consider possible adjustments to the sentence ranges in the cells of each guidelines matrix to make sure they effectively represent actual sentencing practice. The Subcommittee will further review the process of identifying eligible offenders for correctional options, and the SCCSP staff will complete an inventory of correctional options that are available throughout the State. The SCCSP website (www.msccsp.org) will be continuously updated with any changes to the Guidelines Manual, while new reports on sentencing-related issues and concerns will be posted on the SCCSP website on a regular basis for review by all interested persons.

In the past fiscal year, the SCCSP responded to its mandate to incorporate a correctional population simulation model to help generate fiscal impact statements for legislators when considering penalty provisions for criminal offenses or modification to sentencing practice. In 2005, the SCCSP contracted with Applied Research Services (ARS) to develop this model, and it will become operational in 2006.

Furthermore, the Commission will continue to work with the University of Maryland's OIEP to develop a web-based guidelines calculation and submission process. The automated sentencing guidelines system will begin operation in 2006. The SCCSP plans to pilot the automated system in a few jurisdictions in the coming year. The web-based submission process is expected to increase the percentage of cases for which a guidelines worksheet is submitted, thereby permitting a more accurate estimate of compliance with the guidelines. The automated system will allow the SCCSP to streamline the guidelines worksheet submission process and should increase the reporting of specific information (e.g. victim information data, offender indigence status, and reasons for departure from the guidelines) which are continually underreported to the SCCSP. In an effort to capture a more complete picture of judicial reconsiderations, the Commission will consider the feasibility of utilizing the automated system to collect data on all reconsideration requests, including those that are denied. Finally, the SCCSP plans to develop and conduct extensive training exercises utilizing the automated worksheet system to ease and promote the use of the guidelines in all circuit courts.

APPENDICES

Appendix B:

Sentencing Guidelines Departures by Offense Type, Fiscal Year 2005 (Most Common Person, Drug, and Property Offenses)

Person Offenses	% Within	% Below	% Above
Assault, 2 nd Degree	83.2%	11.5%	5.3%
Robbery	83.1%	13.1%	3.8%
Robbery with Deadly or Dangerous Weapon	69.3%	25.7%	5.0%
Assault, 1 st Degree	68.9%	28.8%	2.3%
Wearing, Carrying, Transporting Handgun	93.5%	6.0%	0.6%
Drug Offenses	% Within	% Below	% Above
Distribution Cocaine	67.0%	31.7%	1.3%
Distribution Heroin	70.0%	29.7%	0.3%
Distribution Marijuana	87.7%	10.3%	2.1%
Possession Cocaine	82.8%	13.7%	3.4%
Possession Marijuana	88.1%	1.0%	10.8%
Property Offenses	% Within	% Below	% Above
Theft, \$500 or Greater	78.4%	17.4%	4.2%
Burglary, 1 st Degree	72.9%	25.1%	2.0%
Theft, Less Than \$500	72.0%	21.4%	6.5%
Burglary, 2 nd Degree	74.9%	23.4%	1.7%
Burglary, 4 th Degree	82.0%	12.4%	5.6%