

Maryland State Commission on Criminal Sentencing Policy

2012 | Annual Report



Maryland State House

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State's Attorney

Honorable Joseph I. Cassilly

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Criminal Sentencing Policy
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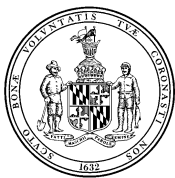


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MSCCSP



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Commissioners

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Executive Director

David A. Soulé, Ph.D.

January 2013

To: The Honorable Martin J. O'Malley, Governor
The Honorable Robert M. Bell, Chief Judge of Maryland
The Honorable Members of the General Assembly of Maryland
The Citizens of Maryland

Pursuant to Criminal Procedure Article, §6-209, Annotated Code of Maryland, the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) is required to annually review sentencing policy and practice and report upon the work of the Commission. In compliance with this statutory mandate, we respectfully submit for your review the 2012 Annual Report of the MSCCSP.

This report details the activities of the MSCCSP over the past year and provides an overview of circuit court sentencing practices and trends in Maryland for fiscal year 2012. Additionally, the report provides a comprehensive examination of judicial compliance with the state's voluntary sentencing guidelines, describes information provided on the state's sentencing guidelines worksheets, and finally provides a description of planned activities for 2013. We hope that this report, combined with the other resources provided by the MSCCSP, help inform and promote fair, proportional, and non-disparate sentencing practices throughout Maryland.

The MSCCSP wishes to acknowledge and thank those agencies and individuals whose contributions to the sentencing guidelines and corresponding guidelines worksheets enable us to complete our work and produce this report. If you have any questions or comments regarding this report, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Diane O. Leasure".

Judge Diane O. Leasure, (Ret.)
Chair

TABLE OF CONTENTS

| | |
|--|------------|
| Executive Summary | iii |
| The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) | 1 |
| Guidelines Background..... | 1 |
| MSCCSP Background | 2 |
| MSCCSP Structure..... | 4 |
| MSCCSP Activities in 2012 | 6 |
| Modifications Related to New and Amended Offenses Passed During the 2012 Legislative Session | 6 |
| Additional Modifications to the Guidelines Offense Table in 2012..... | 7 |
| Revisions to the Computation of Prior Adult Criminal Record regarding Medical Marijuana Convictions | 8 |
| Updates to the Maryland Sentencing Guidelines Worksheet..... | 9 |
| Training and Education..... | 11 |
| Information, Data Requests, and Outreach..... | 13 |
| Data Collection, Oversight, and Verification..... | 14 |
| Subcommittee Work | 15 |
| Maryland Automated Guidelines System (MAGS)..... | 15 |
| Sentencing/Correctional Simulation Model | 22 |
| Public Comments Hearing | 23 |
| Sentences Reported in FY 2012 | 25 |
| Worksheets Received..... | 25 |
| Guidelines Case Characteristics | 27 |
| Judicial Compliance with Maryland’s Voluntary Sentencing Guidelines | 35 |
| Judicial Compliance Rates Overall | 35 |
| Judicial Compliance Rates by Circuit..... | 37 |
| Judicial Compliance Rates by Crime Category | 39 |
| Judicial Compliance Rates by Type of Disposition | 40 |
| Judicial Compliance Rates by Crime Category and Disposition | 41 |
| Departure Reasons..... | 42 |
| Additional Information Collected in Response to Legislative Mandates..... | 45 |
| Report on Adjustments from Reconsidered Sentences Involving Crimes of Violence..... | 45 |
| Economic Loss in Title 7 and Title 8 Crimes | 46 |

TABLE OF CONTENTS (CONTINUED)

| | |
|--|----|
| MSCCSP Planned Activities for 2013 | 47 |
| Appendices | 49 |
| Appendix A: Sentencing Guidelines Matrices..... | 50 |
| Appendix B: Maryland Sentencing Guidelines Worksheet..... | 53 |
| Appendix C: Sentencing Guidelines Compliance and Average Sentence by Offense Type, Fiscal Year 2012 | 54 |
| Appendix D: Description of Types of Disposition..... | 55 |
| Appendix E: Common Departure Reasons Listed on the Sentencing Guidelines Departure Reference Card | 56 |

EXECUTIVE SUMMARY

Maryland's voluntary sentencing guidelines were initiated statewide in 1983. In determining the appropriate sentence range, the guidelines were designed to account for both offender and offense characteristics. The guidelines recommend whether an individual should be incarcerated and if so, provide a recommended sentence length range. Maryland's guidelines are voluntary and therefore judges may impose a sentence outside the prescribed guidelines range. However, judges are required to document the reason or reasons for sentencing outside the guidelines.

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) was created in 1999 to oversee sentencing policy and to monitor the state's voluntary sentencing guidelines. The General Assembly established six objectives to guide the work of the Commission, including: (a) the reduction of unwarranted sentencing disparity; (b) the prioritization of prison usage for violent and career offenders; (c) the preservation of meaningful judicial discretion; and (d) the imposition of the most appropriate criminal penalties. The Commission consists of 19 members, including members of the Judiciary, members who are active in the criminal justice system, members of the Senate of Maryland and the House of Delegates, and representatives of the public.

The primary responsibilities of the MSCCSP include: collection and automation of the sentencing guidelines worksheets, maintaining the sentencing guidelines database, and conducting training and orientation for criminal justice personnel. In addition, the Commission monitors judicial compliance with the guidelines and adopts changes to the guidelines when necessary.

In 2012, the MSCCSP classified new and amended offenses passed during the 2012 Legislative Session; reviewed and classified previously unclassified offenses; adopted revisions to the computation of the prior adult criminal record regarding medical marijuana convictions; and updated the sentencing guidelines worksheet to change the *50% of sentence announced* field to more clearly indicate that the field pertains to cases involving a crime of violence. The MSCCSP also provided training and education to promote the consistent application of the sentencing guidelines; provided data and sentencing-related information to state agencies and other interested parties; and completed several data verification and data entry reviews to

improve the accuracy of the sentencing guidelines data. The MSCCSP completed several critical steps in preparing for the Maryland Automated Guidelines System (MAGS) pilot project and then implemented and began assessing the use of the automated system. Finally, the interagency simulation model committee met to establish a protocol for utilizing the sentencing/correctional simulation model.

In fiscal year 2012, the MSCCSP received guidelines worksheets for 10,292 sentencing events in the state's circuit courts. Worksheets for 155 of the 10,292 sentencing events were submitted electronically as part of the MAGS pilot in Montgomery County. The vast majority of cases were resolved by either an American Bar Association (ABA) plea agreement (45.6%) or a non-ABA plea agreement (36.8%). Approximately half of convicted defendants (51%) were sentenced to both incarceration and probation (as opposed to incarceration only, probation only, or neither). The average sentence length among those who were incarcerated (excluding suspended time) was 4.7 years.

The overall guidelines compliance rate in fiscal year 2012 well exceeded the Commission's goal of 65% compliance. When departures occurred, they were more often below the guidelines than above. All eight judicial circuits met the benchmark rate of 65% compliance, and the circuit with the largest number of defendants (Eighth Circuit) had the highest compliance rate. Departures were least likely for person offenses, followed closely by drug offenses and property offenses. A comparison of judicial compliance rates by type of disposition (plea agreement, plea with no agreement, bench trial, and jury trial) showed that compliance was most likely in cases adjudicated by a plea agreement. In contrast, compliance was least likely in cases adjudicated by a bench trial. When compliance 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 resolved by a bench trial had the lowest compliance rate, and the majority of departures in this category were sentenced below the guidelines.

Reasons for departure continued to be underreported in fiscal year 2012. When reported, the most commonly cited reason for departures below the guidelines was that the parties reached a plea agreement that called for a reduced sentence. In comparison, the most commonly cited reason for departures above the guidelines was a recommendation of the State's Attorney or Division of Parole and Probation.

In 2013, the MSCCSP will work with the Judiciary to establish a protocol for expanded use of MAGS and hopes to begin a gradual statewide roll-out of the automated system. The MSCCSP will also work with programmers at the Department of Public Safety & Correctional Services to refine the MAGS application and release an updated version of MAGS. The MSCCSP will continue to review sentencing practice throughout the state and will provide training, while working with the Judiciary to maintain a sentencing guidelines orientation program for all new circuit court appointees. The MSCCSP will continue to meet individually with circuit court county administrative judges to review sentencing guidelines data and obtain feedback on their experiences with the sentencing guidelines. Additionally, the MSCCSP will continue to explore possible funding opportunities to further study the use of risk assessment at sentencing. The MSCCSP will also utilize the simulation model on a limited basis during the 2013 Legislative Session to test the model's capabilities and determine the necessary resources for the Commission's use of the model in future years. Finally, the Sentencing Guidelines Subcommittee will examine the role of the juvenile delinquency component in the calculation of the Offender Score to review the most appropriate indicator of an individual's delinquent conduct. This sample of planned activities illustrates some of the efforts to be completed by the MSCCSP in 2013 to continue working towards fulfilling its legislatively mandated mission to promote fair, proportional, and non-disparate sentencing policies and procedures.

THE MARYLAND STATE COMMISSION ON CRIMINAL SENTENCING POLICY (MSCCSP)

Guidelines Background

Maryland was one of the first states to initiate a sentencing guidelines system. The concept of judicial sentencing guidelines was introduced in the late 1970s by the Judiciary in response to a growing concern regarding unwarranted sentencing disparity. The Judicial Committee on Sentencing was formed in May 1978 by the Court of Appeals to study a range of alternative sentencing systems (e.g., determinate sentencing, mandatory sentencing, sentencing councils) and report its recommendations to the Judicial Conference. The Committee decided on a system of voluntary, descriptive sentencing guidelines for use in circuit courts only, which was unanimously approved by the Judicial Conference in April 1979. Under a grant from the National Institute of Justice, the sentencing guidelines were developed based on extensive collection and analysis of data on past sentencing practices in Maryland. In determining the appropriate sentence range, the guidelines were designed to account for both offender and offense characteristics. Beginning in June 1981, the sentencing guidelines were test piloted in four jurisdictions selected to represent a diverse mix of areas. Following the success of the test pilot, the Judicial Conference voted to adopt the guidelines statewide in 1983.

Pursuant to Criminal Procedure Article, §6-216, Annotated Code of Maryland, the circuit courts are required to consider the sentencing guidelines in deciding the proper sentence. The voluntary sentencing guidelines cover three categories of offenses: person, drug, and property. The guidelines recommend whether an individual should be incarcerated and if so, provide a recommended sentence length range. For each offense category, there is a separate grid or matrix, in which each cell contains a recommended sentence range. Appendix A includes a copy of the three sentencing matrices. The sentence recommendation is determined in the grid by the cell that is the intersection of an individual's offense score and offender score. For drug and property offenses, the offense score is determined by the seriousness of the offense (or "seriousness category"). For offenses against persons, the offense score is determined by the seriousness category, the physical or mental injury to the victim, the weapon used, and any special vulnerability of the victim, such as being under eleven years old, 65 years or older, or physically or mentally disabled. The offender score is a measure of the individual's criminal history and is determined by whether or not the offender was in the criminal justice system at the time the offense was committed (i.e., on parole, probation, or temporary release from

incarceration, such as work release), has a juvenile record or prior criminal record as an adult, and has any prior adult parole or probation violations.

The guidelines sentence range represents only non-suspended time. The sentencing guidelines are advisory and judges may, at their discretion, impose a sentence outside the guidelines. If a judge chooses to depart from the sentencing guidelines, the Code of Maryland Regulations (COMAR) 14.22.01.05.A mandates that the judge document the reason or reasons for imposing a sentence outside of the recommended guidelines range.

MSCCSP Background

The Maryland General Assembly created the State Commission on Criminal Sentencing Policy (MSCCSP) in May 1999, after a study commission, the Maryland Commission on Criminal Sentencing Policy, recommended the creation of a permanent commission in its final report to the General Assembly. The MSCCSP assumed the functions of the Sentencing Guidelines Advisory Board of the Judicial Conference, which was initially established in 1979 to develop and implement Maryland's sentencing guidelines. The MSCCSP was created to oversee sentencing policy in Maryland and is primarily responsible for maintaining and monitoring the state's voluntary sentencing guidelines. The enabling legislation for the MSCCSP (Criminal Procedure Article, §§6-201 - 6-214, Annotated Code of Maryland) set out six legislative goals for sentencing in Maryland, stating that:

- 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;
- Sentencing policies should aid citizen understanding of the time that an offender will actually be incarcerated, if any;
- Sentencing guidelines are voluntary, and it is voluntary for the courts to sentence within the guidelines;
- Prison capacity and prison usage should give priority to the incarceration of violent and career offenders;
- Sentencing policies should preserve meaningful judicial discretion in the imposition of sentences and sufficient flexibility to permit individualized sentences; and
- 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 MSCCSP was designed and authorized with the purpose of fulfilling the above legislative intentions. The General Assembly authorized the MSCCSP 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” (1999 Md. Laws ch. 648). The MSCCSP also has authority to “adopt guidelines to identify defendants who would be appropriate for participation in corrections options programs” (1999 Md. Laws ch. 648). 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.

Pursuant to Criminal Procedure Article, §6-210, the MSCCSP is required to collect sentencing guidelines worksheets, automate the information contained in the worksheets, monitor sentencing practice and adopt changes to the sentencing guidelines matrices. The Maryland sentencing guidelines worksheet enables the MSCCSP to collect criminal sentencing data from Maryland state and local agencies involved in criminal sentencing in order to meet these requirements. Worksheets are completed by criminal justice practitioners for guidelines-eligible criminal cases prosecuted in circuit court to determine the recommended sentencing outcome and to record sentencing data. A copy of the Maryland sentencing guidelines worksheet is provided in Appendix B. After a worksheet is completed, the sentencing judge is expected to review the worksheet for completeness and accuracy (COMAR 14.22.01.03.E(4)), and a hard copy is mailed to the Commission’s office. The Commission staff is responsible for data entry and monitoring of all data collected within the guidelines worksheets. Data collected by the Commission permit analysis of sentencing trends with respect to compliance with the guidelines, particular offenses, specific types of offenders, and geographic variations. The MSCCSP utilizes the guidelines data to monitor circuit court sentencing practice and to adopt changes to the guidelines consistent with legislative intent when necessary. The data collected are also expected to support the use of a correctional population simulation model designed to forecast prison bed-space and resource requirements.

The Commission’s enabling legislation also authorized the MSCCSP to conduct guidelines training and orientation for system participants and other interested parties. Additionally, the MSCCSP 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.

MSCCSP Structure

The MSCCSP consists of 19 members, including members of the Judiciary, members who are active in the Maryland criminal justice system, members of the Senate of Maryland and the House of Delegates, as well as public representatives.



The Honorable Diane O. Leasure was appointed as the chair of the MSCCSP by Governor Martin O'Malley on August 8, 2011 for a term of four years from July 1, 2011. Other Governor appointees include James V. Anthenelli and Paul F. Enzinna, defense attorneys who serve as the two public representatives on the Commission; Colonel Marcus L. Brown, Superintendent of the Maryland State Police who serves as the representative from law enforcement; Honorable Joseph I. Cassilly, State's Attorney for Harford County who serves as the representative for the Maryland State's Attorneys Association; LaMonte E. Cooke, Director of Correctional Services for Queen Anne's County who serves as the local correctional facilities representative; Richard A. Finci, criminal defense attorney who serves as the representative for the Maryland Criminal Defense Attorneys Association; Honorable Laura L. Martin, State's Attorney for Calvert County who serves as the victims' advocacy group representative; and Dr. Charles F. Wellford from the University of Maryland, the criminal justice or corrections policy expert.

The Chief Judge of the Court of Appeals of Maryland is responsible for three appointments to the Commission. The judicial appointees are Judge Arrie W. Davis, Court of Special Appeals of Maryland; Judge Alfred Nance, Circuit Court of Baltimore City; and Judge John P. Morrissey, District Court of Prince George's County.

The President of the Senate is responsible for two appointments: Senators Delores G. Kelley and Lisa A. Gladden. The Speaker of the House is also responsible for two appointments: Delegates Joseph F. Vallario, Jr. and Curtis S. Anderson.

Finally, ex-officio members include the State's Attorney General, Douglas F. Gansler; the State Public Defender, Paul B. DeWolfe; and the Secretary of the Department of Public Safety and Correctional Services, Gary D. Maynard.

The MSCCSP is a state agency within the Executive Branch of Maryland, and its office is located at the University of Maryland in College Park. In an effort to allow the Commission to benefit from the shared research resources of the university, the Commission's staff office was

set up under the guidance of the Department of Criminology and Criminal Justice. The University of Maryland connection reinforces the independent status of the Commission by ensuring the non-partisan review and analyses of sentencing data. The MSCCSP and University of Maryland relationship is mutually beneficial, as the MSCCSP relies on student interns for a substantial portion of the data entry requirements, while also receiving administrative and information technology support from the university. In return, the university benefits from opportunities for students to develop research and practical skills through internships at the MSCCSP.

MSCCSP ACTIVITIES IN 2012

The MSCCSP held three meetings in 2012. The meetings were held on June 25, 2012, September 18, 2012, and December 11, 2012. In addition, the Commission's annual public comments hearing was held on December 11, 2012 at the House Office Building in Annapolis, Maryland. The minutes for all Commission meetings are posted on the Commission's website (www.msccsp.org). The following discussion provides a review of the Commission's activities in 2012.

Modifications Related to New and Amended Offenses Passed During the 2012 Legislative Session

The MSCCSP reviewed new crime legislation from the 2012 Legislative Session and identified one new offense which required the adoption of a seriousness category. The newly adopted seriousness category was recommended by reviewing the seriousness categories for *similar* offenses (i.e., offenses with similar penalties, misdemeanor/felony classification, and crime type) previously classified by the Commission. The new offense and its respective seriousness category shown in Table 1 were reviewed by the MSCCSP at the June 25, 2012 meeting. The new seriousness category was submitted to the Administrative, Executive, and Legislative Review (AELR) Committee and was adopted in the COMAR effective November 1, 2012.

Table 1. Guidelines Offenses and Adopted Seriousness Categories Related to New Offenses, 2012 Legislative Session

| Legislation | Statute | Offense | Statutory Maximum | Adopted Seriousness Category |
|----------------------------------|----------------------|--|-------------------|------------------------------|
| Chapter 193/194 SB 214/HB 350 | CR, §5-601(c)(2)(ii) | CDS and Paraphernalia Possession of less than 10 grams of marijuana | 90 days | VII |

The MSCCSP considered amended crime legislation from the 2012 Legislative Session and identified two offenses which required review due to changes to the penalty structure. For each offense, the MSCCSP decided to maintain the existing seriousness category classification. However, the offenses still required modifications to the Guidelines Offense Table to reflect revisions to the statutory maximum penalties. The two amended offenses and the various revisions are noted in Table 2. The offense table updates were submitted to the AELR Committee and were adopted in the COMAR effective November 1, 2012.

Table 2. Guidelines Offenses and Adopted Seriousness Categories Related to Amended Offenses, 2012 Legislative Session

| Legislation | Statute | Offense | Prior Stat. Max. / Seriousness Category | New Stat. Max. / Seriousness Category |
|----------------------------------|----------------------|--|---|---------------------------------------|
| Chapter 249/250 SB 521/HB 604 | CR, §3-601(b)(2)(ii) | Abuse and Other Offensive Conduct Child Abuse – Physical, with death | 30 years / II | 40 years / II ^a |
| Chapter 434 HB 1334 | CR, §3-211(f) | Assault and Other Bodily Woundings Cause a life-threatening injury by motor vehicle or vessel while impaired by controlled dangerous substance | 2 years / VI | 3 years / VI ^a |

^a No change to seriousness category.

Additional Modifications to the Guidelines Offense Table in 2012

In its continued review of seriousness categories for all criminal offenses sentenced in the state's circuit courts, the MSCCSP identified five additional offenses that were not previously classified by the MSCCSP. The Commission reviewed the first two offenses listed in Table 3 during the September 20, 2011 meeting and adopted seriousness categories and offense type classifications consistent with those for *similar* offenses. These offenses and their respective classifications were submitted to the AELR Committee and were adopted in the COMAR effective March 1, 2012. The Commission reviewed the third and fourth offenses listed in Table 3 during the June 25, 2012 meeting. These offenses and their respective classifications were submitted to the AELR Committee and were adopted in the COMAR effective November 1, 2012. The MSCCSP reviewed the common law offense of *affray* during the December 11, 2012 meeting and voted to add the offense to the Guidelines Offense Table as a seriousness category VI, person offense. The proposed classification and seriousness category for *affray* are listed in the last row of Table 3. These changes were submitted to the AELR Committee and are expected to be adopted in the COMAR effective April 2013.

Table 3. Adopted Seriousness Categories for Previously Unclassified Offenses

| Statute | Offense | Statutory Maximum | Offense Type | Adopted Seriousness Category |
|---|--|-------------------|--------------|------------------------------|
| CR, §2-210 | Manslaughter and Related Crimes Criminally negligent manslaughter by vehicle or vessel | 3 years | Person | VII ^a |
| PS, §5-206 | Weapon Crimes – In General Possession of rifle or shotgun after having been convicted of a crime of violence or select drug crimes | 15 years | Person | V |
| EL, §16-201 | Election Offenses Violate election laws as defined in EL, §16-201 | 5 years | Property | VII |
| EL, §13-401 EL, §13-602 (penalty) | Election Offenses Failure to include name of finance entity and treasurer on campaign material | 1 year | Property | VII |
| Common Law | Disturbing the Peace, Disorderly Conduct, and Related Crimes Affray | Life | Person | VI |

^a The MSCCSP agreed to revisit the proposed seriousness category for this offense after a designated three-year review period at which time it is expected that sufficient data will have been collected to allow for a consideration of sentencing patterns for this offense.

Revisions to the Computation of Prior Adult Criminal Record regarding Medical Marijuana Convictions

During the 2011 Legislative Session, the Maryland General Assembly passed Senate Bill 308 – *Medical Marijuana Affirmative Defense* – which was signed into law by Governor O’Malley effective June 1, 2011. In short, Senate Bill 308 revised Criminal Law, Articles §5-601 and §5-619, Annotated Code of Maryland, to indicate that patients whose doctors have diagnosed them with a debilitating medical condition (including a condition that is “severe and resistant to conventional medicine”) are subject to arrest for possession of marijuana, but can assert the medical use of marijuana as an affirmative defense at trial. In addition to having a debilitating condition, patients need to show that the doctor who made the diagnosis was one with whom the patient has an ongoing, bona fide physician-patient relationship, and that marijuana is likely to provide the patient with therapeutic or palliative relief. Finally, this defense is not available to anyone in possession of more than one ounce of marijuana or who uses marijuana in a public place.

At the June 25, 2012 meeting, the MSCCSP considered whether the instructions for the prior adult criminal record section of the Maryland Sentencing Guidelines worksheet should be

adjusted to account for instances when the court agreed to reduce the maximum penalty for marijuana possession or marijuana paraphernalia possession to a \$100 fine due to evidence of medical necessity. Previously, the MSCCSP determined that non-incarcerable traffic offenses should not be scored as part of the prior adult criminal record. At the June 25, 2012 meeting, the MSCCSP voted to adopt the same rule for a medical marijuana conviction and revised the instructions for computation of the prior adult criminal record when calculating the offender score. As of November 1, 2012, COMAR 14.22.01.10.B(3)(a)(i) states [new language is underlined]:

The prior adult criminal record includes all adjudications preceding the current sentencing event, whether the offense was committed before or after the instant one. Unless expunged from the record, or proven by the defense to have been eligible for expungement prior to the date of offense pursuant to Criminal Procedure Article, §§10-101 —10-105, Annotated Code of Maryland, probations before judgment (PBJ) and convictions under the Federal Youth Corrections Act (FYCA) shall be included. The individual completing the worksheet may not consider violations of public local laws, municipal infractions, contempt, criminal non-support, marijuana possession or marijuana paraphernalia possession convictions that qualify for a non-incarceration penalty due to evidence of medical necessity, and non-incarcerable traffic offenses as part of a prior adult criminal record.

Updates to the Maryland Sentencing Guidelines Worksheet

In November 2012, the MSCCSP began distribution of a revised Maryland sentencing guidelines worksheet. The updated worksheet included a change to the *50% of sentence announced* field to more clearly indicate that the field pertains to cases involving a crime of violence. The language on the worksheet was amended from “50% of Sentence Announced” to “50% of Sentence Announced for COVs”. This field is intended to capture whether or not there was an announcement regarding the mandatory serving of 50% of a sentence for violent offenses. Pursuant to Criminal Procedure Article, §6-217, Annotated Code of Maryland, when a sentence of incarceration is given for a violent crime as defined in CS, §7-101 for which a defendant will be eligible for parole under Correctional Services Article, §7-301(c) or (d), the court shall state in open court the minimum time the defendant must serve before becoming eligible for parole and before becoming eligible for conditional release under mandatory supervision under CS, §7-501. The revision to the worksheet is illustrated in Image 1.

Image 1. Snapshot of revision to the 50% of Sentence Announced Field on the Maryland Sentencing Guidelines Worksheet, November 2012

| VICTIM INFORMATION | | SENTENCE DEPARTURE INFORMATION | | Range | Drug Court | Additional Information or Institutional/Parole Recommendation | |
|------------------------|----------------|---|--|-------------------------------------|---|---|---------------------------------|
| Victim | Yes ___ No ___ | If the actual sentence departs from the guidelines range, please indicate the Court's reason(s) using the numerical code(s) on the list of common departure factors in the manual, if applicable. | | Multiple Counts Only | ___ Yes ___ No ___ Other ___ Yes ___ No | Worksheet Completed By | |
| Victim Unavailable | Yes ___ No ___ | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | | TO | | | Title |
| NRF | Yes ___ No ___ | Departure Code 9 or 18 (Please Explain): | | 50% of Sentence Announced for COV's | | | Sentencing Judge (Please Print) |
| Victim Notified Plea | Yes ___ No ___ | | | ___ Yes ___ No | Parole Notification ___ Yes ___ No | | Sentencing Judge's Signature |
| Victim Notified Date | Yes ___ No ___ | | | | | | |
| Victim Present | Yes ___ No ___ | | | | | | |
| Written VIS | Yes ___ No ___ | | | | | | |
| Oral VIS | Yes ___ No ___ | | | | | | |
| No Contact with Victim | Yes ___ No ___ | | | | | | |
| CICB Cost Imposed | Yes ___ No ___ | | | | | | |

COPIES: White - Judge; Blue - Sentencing Commission; Green - Attach to Commitment or Probation Order; Yellow - File; Pink - Prosecution; Gold - Defense

7/2012 (1.7)

At the December 11, 2012 meeting, the MSCCSP also voted to implement previously adopted changes to the victim-related questions on the guidelines worksheet. The changes to the worksheet are displayed in Table 4. These changes were adopted so that the collected data on victims would be more useful, accurate, and consistent with what was intended by the Commission. The revised worksheet will be sent for production and printing, and the MSCCSP expects to start distributing the new worksheet in March 2013. The MSCCSP will also plan to implement the same changes to the victim-related questions in the Maryland Automated Guidelines System (MAGS) application at the same time.

Table 4. Revisions to the Victim Information Questions on the Maryland Sentencing Guidelines Worksheet

| Question | Full Description of Question. All responses are: Yes/No |
|---|---|
| Victim Unavailable Non-participation | Was the victim unavailable to participate in the sentencing process? Check yes if the victim did not participate, was not located, or did not maintain contact with involved parties, or waived his/her rights. |
| NRF Victim Notification Form | Was a notification request <u>Crime Victim Notification & Demand for Rights</u> form filed by a victim? Criminal Procedure Article, §11-104 |
| No Contact with Victim Requested | Did victim or State make a request that defendant have no contact with victim? Criminal Procedure Article, §11-402 |
| No Contact Ordered | Did the sentencing judge order the defendant to have no contact with the victim? Criminal Procedure Article, §11-402 |
| CICB Costs Imposed | Were Criminal Injury Compensation Board (CICB) costs imposed? Criminal Procedure Article, §11-819 [Question eliminated from worksheet] |
| Indigence Established Victim Court Costs Imposed | Pursuant to Courts & Judicial Proceedings Article (CJ), §7-405, Annotated Code of Maryland and Maryland Rule 1-325 4-353, did the defendant establish indigence to waive the victim related court costs imposed under CJ, §7-409 (yes/no)? <u>Were the victim related court costs imposed pursuant to Courts and Judicial Proceedings Article, §7-409 and Maryland Rule 4-353? The costs outlined in CJ, §7-409 include a \$45 circuit court fee that is divided among the State Victims of Crime Fund, the Victim and Witness Protection and Relocation Fund, and the Criminal Injuries Compensation Fund.</u> |

Training and Education

In order to promote the consistent application of the guidelines and accurate completion of the guidelines worksheet, the MSCCSP continues to provide regular training and education for criminal justice practitioners around the state. Training sessions offer a comprehensive overview of the sentencing guidelines calculation process and include detailed instructions for completing the offender and offense scores, an explanation of common omissions/mistakes, and several examples of more complicated sentencing guidelines scenarios. In 2012, the MSCCSP provided guidelines training sessions that were attended in total by approximately 160 participants, including circuit court judges, State's Attorneys, public defenders, and parole & probation agents.

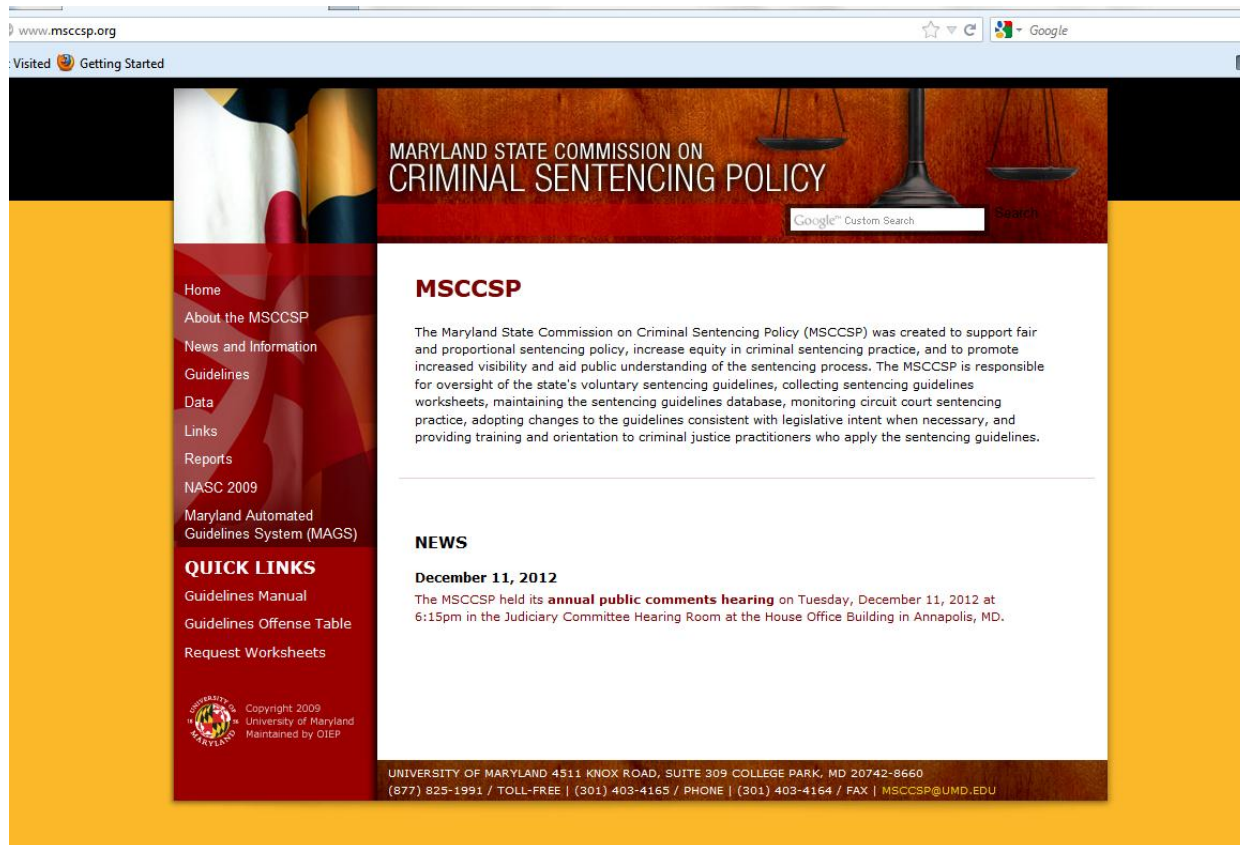
In 2012, the MSCCSP Executive Director, Dr. David Soulé met with 4 of the 24 county administrative judges. The meetings provided an opportunity for the MSCCSP to review sentencing guidelines-related data with the individual jurisdictions, discuss proper worksheet completion procedures, and allowed the MSCCSP to receive feedback from the judges on areas of interest or concern regarding the activities of the MSCCSP. Additionally, the Executive Director provided training for newly-appointed judges at the annual new trial judges' orientation on April 24, 2012.

In addition to providing training and education programs, the MSCCSP staff is available via phone (301-403-4165) and e-mail (mcccsp@umd.edu) from 8 a.m. to 5 p.m., Monday through Friday, to provide prompt responses to any questions or concerns regarding the sentencing guidelines. Each year the Commission staff responds to hundreds of questions regarding the guidelines via phone and e-mail. These questions are usually asked by those responsible for completing the guidelines worksheets (i.e., parole and probation agents, State's Attorneys, defense attorneys, and law clerks). Typical questions include asking for assistance in locating a specific offense and its respective seriousness category within the Guidelines Offense Table and clarification on the rules for calculating an offender's prior adult criminal record score.

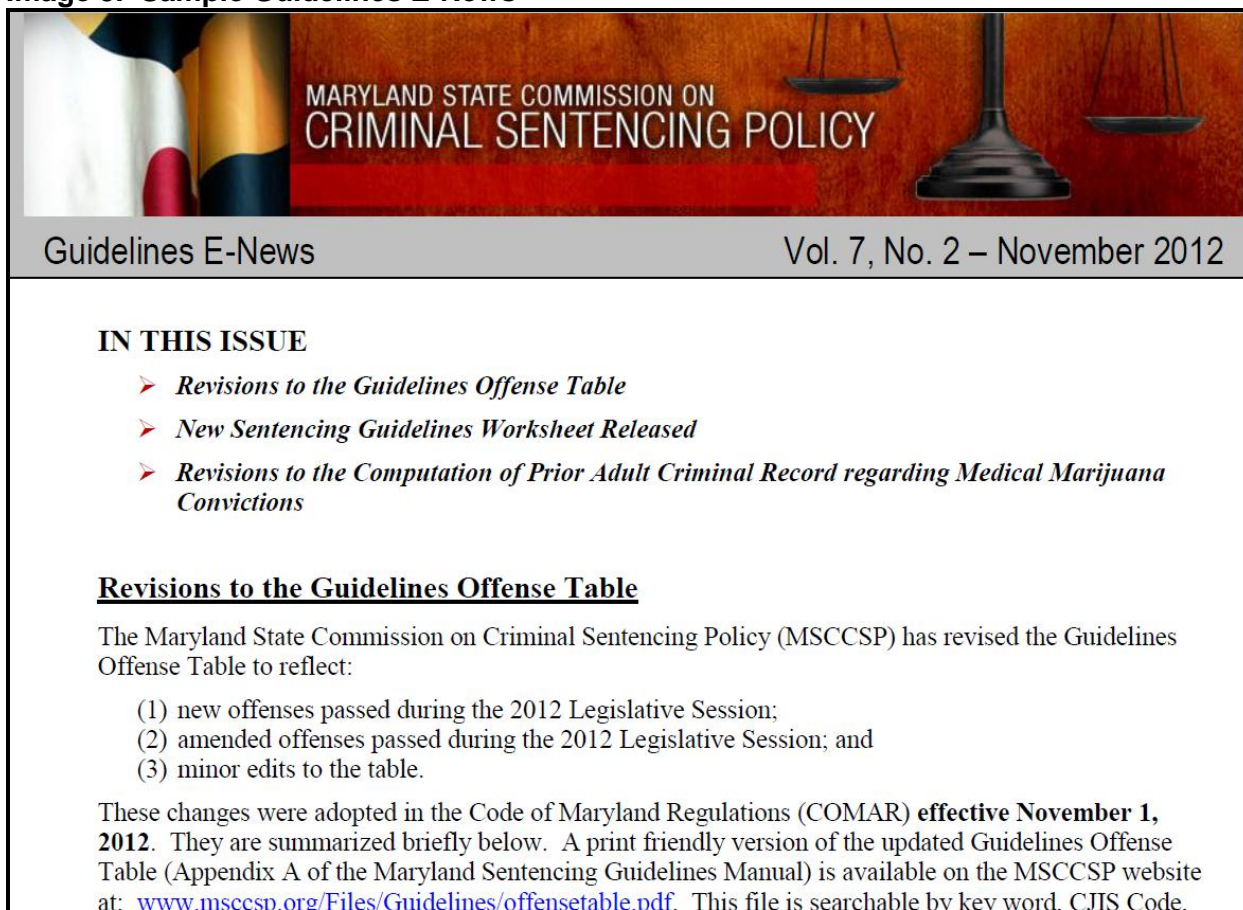
The MSCCSP also maintains a website (www.mcccsp.org) that is updated regularly to provide materials for criminal justice practitioners regarding the application of the guidelines, including text-searchable and print-friendly copies of the most recent version of the Maryland Sentencing Guidelines Manual (MSGM) and the Guidelines Offense Table, a list of offenses with non-suspendable mandatory minimum penalties, a list of offenses with seriousness category revisions, a sample of Frequently Asked Questions (FAQ) and their respective answers, reports

on sentencing guidelines compliance and average sentences, and other relevant reports. The MSCCSP website also provides minutes from prior Commission meetings in addition to information such as the date, location, and agenda for upcoming meetings.

Image 2. MSCCSP Website



In 2012, the MSCCSP continued to deliver timely notice of guidelines-relevant information via the dissemination of the Guidelines E-News. The Guidelines E-News is a periodic report delivered electronically via e-mail to criminal justice practitioners in the state. The Guidelines E-News provides information on changes and/or additions to the guidelines and serves as an information source on sentencing policy decisions. For example, the November 2012 issue (Vol. 7, No. 2) highlighted revisions to the Guidelines Offense Table to reflect the addition of new and amended offenses passed during the 2012 Legislative Session. It also highlighted the release of an updated sentencing guidelines worksheet and revisions to the computation of the prior adult criminal record regarding medical marijuana convictions. This Guidelines E-News highlighted these updates to raise awareness regarding the most recent revisions to the guidelines.

Image 3. Sample Guidelines E-News**Information, Data Requests, and Outreach**

In an effort to aid public understanding of the sentencing process in Maryland, the MSCCSP is also available to respond to inquiries for information related to sentencing in the state's circuit courts. In 2012, the Commission responded to multiple requests for data and/or specific information related to the sentencing guidelines and sentencing trends throughout the state. Requests for information and data are submitted by a variety of organizations/individuals, including the Governor's Office, legislators, circuit court judges, law clerks, prosecutors, defense attorneys, parole and probation agents, victims and their family members, defendants and their family members, faculty/students of law and criminal justice, government agencies, media personnel, and other interested citizens. The MSCCSP typically responds to requests for data by providing an electronic data file created from the information collected on the sentencing guidelines worksheets. Additionally, the MSCCSP annually completes a topical report entitled, *Maryland Sentencing Guidelines Compliance and Average Sentence for the Most Common Person, Drug, and Property Offenses*. This report summarizes sentencing guidelines compliance and average sentence for the five most common offenses in each crime category

(person, drug, and property) and is posted on the MSCCSP website. An abbreviated version of the report is provided in Appendix C.

The MSCCSP is also responsible for responding to the Legislature's requests for information to help produce fiscal estimate worksheets for sentencing-related legislation while the General Assembly is in session. In 2012, the Commission provided information for 88 separate bills that proposed modifications to criminal penalties or sentencing/correctional policies.

Finally, the MSCCSP works to provide outreach to other criminal justice stakeholders in an effort to provide updates on the activities completed by the Commission. During the past year, the MSCCSP Executive Director was invited to present to the Conference of Circuit Judges regarding the continued development of the Maryland Automated Guidelines System; participated in the *Sentencing Commissions and Guidelines Workshop* at the Robina Institute at the University of Minnesota Law School; and was asked to present on activities of the MSCCSP and provide feedback on guidelines data for the Prince George's County Criminal Coordinating Council. Additionally, Dr. Soulé continued to serve as a liaison to the Judiciary Ad Hoc Committee as to Sentencing Alternatives, Reentry and Best Practices (AHSC).

Data Collection, Oversight, and Verification

The MSCCSP staff is responsible for the collection and maintenance of the Maryland sentencing guidelines database, which is compiled via data submitted on the Maryland sentencing guidelines worksheet. The Commission staff reviews guidelines worksheets as they are received. The staff verifies that the guidelines worksheets are being completed accurately and contacts those who prepared the worksheets to notify them of detected errors in an effort to reduce the likelihood of repeat mistakes. Detected errors and omissions are resolved when possible. Once the guidelines worksheets are reviewed, they are data-entered into the Maryland sentencing guidelines database by trained interns and staff.

Each year, the staff spends considerable time checking and cleaning the data maintained within the Maryland sentencing guidelines database in an effort to maximize the accuracy of the data. These data verification activities typically involve: (1) identifying cases in the database with characteristics likely to result in data entry error, (2) reviewing the guidelines worksheets for these cases, and (3) making corrections to the records in the database when necessary. The MSCCSP staff also routinely researches missing values on key variables through the Maryland Judiciary Case Search website. Finally, the MSCCSP staff regularly verifies and updates the

database containing the guidelines offenses. Checking and cleaning the data on a regular basis throughout the year allows for increased confidence in the accuracy of the data and permits more reliable offense-specific analyses of the data.

Subcommittee Work

The Commission's Sentencing Guidelines Subcommittee (Guidelines Subcommittee) plays a critical role in reviewing all proposed amendments and updates to the sentencing guidelines. The Guidelines Subcommittee is chaired by the Honorable John Morrissey (Judge, District Court of Prince George's County). Judge Morrissey was appointed chair of the Guidelines Subcommittee in August 2012, replacing Dr. Charles Wellford who astutely chaired the Subcommittee since 1998. Other members of the Guidelines Subcommittee include Richard Finci (criminal defense attorney and Maryland Criminal Defense Attorneys Association representative), Senator Delores Kelley (Baltimore County), Laura Martin (State's Attorney for Calvert County and victims advocacy groups representative), and Judge Alfred Nance (Circuit Court for Baltimore City). Each year, the Guidelines Subcommittee reviews all new and revised offenses adopted by the General Assembly and provides recommendations to the full Commission for seriousness category classification. Additionally, the Guidelines Subcommittee regularly reviews suggested revisions to the guidelines calculation process and reports to the overall Commission on guidelines compliance data. In 2012, the Guidelines Subcommittee met prior to each Commission meeting and was responsible for the initial review and consideration of the classification for new and amended offenses noted in Tables 1 and 2, as well as the previously unclassified offenses noted in Table 3. The Guidelines Subcommittee also played a critical role by providing recommendations for the following: revisions to the instructions for computing the prior adult criminal record when the defendant has a medical marijuana conviction; updates to the Maryland sentencing guidelines worksheet; and developing a protocol to guide the use of the new automated sentencing guidelines system.

Maryland Automated Guidelines System (MAGS)

The Maryland Automated Guidelines System (MAGS) was designed by the MSCCSP to fully automate guidelines calculation in a web-based application that allows court and criminal justice personnel to complete and submit sentencing guidelines worksheets electronically. The MAGS application calculates guideline scores automatically and presents the appropriate sentencing guidelines range for each case after a designated user enters the necessary convicted offense and prior record information. Image 4 displays a sample screenshot from the Offense/Offense

Score screen which allows the user to enter the convicted offense information, calculate an offense score, and calculate the guidelines range for the individual offense.

Image 4. Maryland Automated Guidelines System – Offense/Offense Score

MARYLAND STATE COMMISSION ON CRIMINAL SENTENCING POLICY

MARYLAND SENTENCING GUIDELINES WORKSHEET - OFFENSE/OFFENSE SCORE Save this page Delete this Offense Close

Offense / Offense Score

First Name : John Last Name : Doe SID : 4567891

* Event # 1 Count 1

| | | | |
|--|--|----------------------|-------------|
| Offense Date | 10 / 03 / 2011 (MM/DD/YYYY) | Case # | 02K11000246 |
| Convicted Offense Title | Assault, 1st degree | Most Common Offenses | Search |
| Attempt Conspiracy Solicitation | <input checked="" type="radio"/> Attempt <input type="radio"/> Conspiracy <input type="radio"/> Solicitation | | |
| Enhancement | None | | |
| Flag offense for multiple victim stacking rule | <input type="radio"/> Yes <input checked="" type="radio"/> No | | |

| | | | | | | | | | |
|-------|-----|-----------|--------|--------|------------|-----------|-----|-----------|---|
| I-VII | III | CJIS Code | I-1420 | Source | CR, §3-202 | Stat. Max | 25Y | Mand. Min | 0 |
|-------|-----|-----------|--------|--------|------------|-----------|-----|-----------|---|

Offense Score (Against a Person Only)

A. Seriousness Category III 5

* B. Victim Injury 0

No Injury
 Injury, Non-Permanent

Additionally, MAGS allows users to run multiple sentencing scenarios, enabling them to determine the appropriate guidelines range under varying sentencing conditions. Users are able to print a hard copy of the computed guidelines for each case. This hard copy may be presented to the opposing counsel and to the judge for review prior to sentencing. The sentencing judge or his/her designee is responsible for entering all appropriate sentencing information into MAGS (see Image 5 for a sample screenshot from the GLS/Overall Sentence screen). The judge or his/her designee can then electronically submit the completed guidelines worksheet to the MSCCSP sentencing guidelines database.

MAGS is hosted on web servers maintained by the Department of Public Safety & Correctional Services (DPSCS). DPSCS provides secure access to MAGS and hosts the webpage in a demilitarized zone with secure socket layer for communication to the site. The backend database is located behind the firewall. To access MAGS, users follow a link on the MSCCSP website which directs them to a secure website on a DPSCS server.

Image 5. Maryland Automated Guidelines System – GLS/Overall Sentence

MARYLAND STATE COMMISSION ON CRIMINAL SENTENCING POLICY

Logged in as null
Home | Search | Log Off

MARYLAND SENTENCING GUIDELINES WORKSHEET - GLS/OVERALL SENTENCE

Save this page Previous Next

Offender Information Offender Score List of Offenses Sentence **GLS/Overall Sentence** Victim Information Departure / Submit

First Name : Antonio Last Name : Sample8_july2011 SID : 8234567

Sentence Overall (Across All offenses):

| | | | | |
|--------------------------------|--------------|-------------------------------|-----------------------------|---|
| Total Sentence | 10 0 0 | Year(s) Month(s) Day(s) | * Date of Sentencing | 12 / 30 / 2010 (MM/DD/YYYY) |
| Suspended | 0 0 0 | Year(s) Month(s) Day(s) | * Disposition Type | 3 - Plea, no agreement |
| Credit | 0 | Day(s) | Parole Notification | <input checked="" type="radio"/> Yes <input type="radio"/> No |
| Home Detention | 0 | Month(s) | ? 50% of Sentence Announced | <input type="radio"/> Yes <input checked="" type="radio"/> No |
| Jail/Prison | 10 0 0 | Year(s) Month(s) Day(s) | Community Service | 50 Hours |
| Guidelines Applicable Sentence | 10 | Year(s) | Probation | 3 Years |
| Overall Guidelines Range | 10Y | To 14Y | Fine (\$ amount) | |
| | | | CICB Cost Imposed | <input checked="" type="radio"/> Yes <input type="radio"/> No |
| | | | Indigence Established | <input type="radio"/> Yes <input checked="" type="radio"/> No |
| | | | ? Corrections Options | 4 - None |

Additional Information or Institutional / Parole Recommendation
(You may enter up to 375 characters.)
Recommend Fatuxent Institute.

Save this page Previous Next

The MSCCSP worked with the Administrative Office of the Courts (AOC) to identify one jurisdiction to participate in the pilot project to assess the capabilities of the automated system. The AOC asked the Montgomery County Circuit Court (MCCC) to serve as the pilot site, and the MCCC accepted this invitation. In May 2012, the MCCC began utilizing MAGS to complete and submit sentencing guidelines worksheets for a six-month pilot project. The purpose of the pilot project was to allow the MSCCSP, in conjunction with the AOC and the MCCC, to assess the ability of MAGS to offer a substantial technological improvement to the criminal justice community by providing a more efficient web-enabled application and consequently more timely and accurate assessment of sentencing policy in the state of Maryland. During the course of the past year, the MSCCSP completed several critical steps in preparing for the pilot project and then implemented and began assessing the use of the automated application. The key tasks completed in 2012 are summarized below:

January 23, 2012 – Dr. Soulé and Commissioner Judge John Morrissey review the proposed MAGS pilot project plan at the Conference of Circuit Court Judges meeting. The Conference of Circuit Judges votes to support the proposed MAGS pilot project and recommends that the AOC approve the plan to proceed with the MAGS pilot project in Montgomery County.

January 27, 2012 – The AOC approves the planned pilot project for MAGS in Montgomery County. A memorandum of understanding (MOU) detailing the responsibilities of all parties involved is signed by Montgomery County Administrative Judge John Debelius, State Court Administrator Frank Broccolina, and Dr. Soulé.

February 13, 2012 – Dr. Soulé provides an overview of the MAGS application to Montgomery County Circuit Court judges. A training video is reviewed and the judges provide feedback on the application and the planned pilot project.

Image 6. MAGS Instructional Videos

Instructional Videos

Note: You may need to install a media player such as **RealPlayer** or **QuickTime** to view the instructional video. Real Player will allow Window users to download the video and play it full screen if preferred.

Video 1: Instructional Video for State's Attorneys, P&P Agents, and Defense Attorneys

Click here to view Video 1 utilizing Windows Media Player

Video 2: Instructional Video for Judges and Judges' Designees

March 7, 2012 – MSCCSP staff provides an overview of the MAGS application to the Montgomery County State's Attorney's Office. A training video is reviewed and the prosecutors provide feedback on the application and the planned pilot project.

May 8, 2012 – The MCCC begins a six-month pilot project for MAGS and agrees to utilize MAGS to initiate, edit, and submit all official guidelines worksheets from this date moving forward.

May 10, 2012 – MSCCSP staff provides an overview of the MAGS application to the Montgomery County Public Defender’s Office. A training video is reviewed and the public defenders provide feedback on the application.

June 25, 2012 – Dr. Soulé provides an update on the status of the MAGS pilot project to the Commissioners at the June 25, 2012 MSCCSP meeting. Dr. Soulé provides a brief demonstration to illustrate how the application is accessed and the supporting tools available to MAGS users. Dr. Soulé indicates that the MAGS application has been well received through the first seven weeks of its use, and Commission staff will continue to collect feedback and suggestions for changes to improve the operation of the automated guidelines system. Dr. Soulé explains that minor changes and maintenance updates have been implemented on an immediate basis, whereas more in-depth changes will be tracked and reviewed with the full Commission prior to the completion of the pilot project.

September 18, 2012 – At the MSCCSP meeting, Pamela Harris, Court Administrator for Montgomery County, provides a report on the status of the MAGS pilot project in Montgomery County. Ms. Harris begins her presentation by noting that the Montgomery County courts have implemented many technology initiatives over the years, including the electronic violation of probation reports and electronic pre-sentence reports; however, she believes MAGS has been the easiest application to adopt. Ms. Harris notes that there were a few issues reported during the pilot period, but these issues were addressed and she believes that the program is ready for statewide implementation. Ms. Harris notes that approval by the Conference of Circuit Judges and possibly the consent of the Judicial Council and Cabinet is needed. Ms. Harris indicates that Faye Matthews, the Deputy Court Administrator, requested that a study be conducted to evaluate the effectiveness of the MAGS application. Ms. Harris offers the services of two Ph.D. research staff members to assist with conducting the study in order to prevent a delay in the deployment of the MAGS application.

Laura Martin, reporting on behalf of the Guidelines Subcommittee, notes that the meeting materials include a log which documents feedback received from the users of the application in Montgomery County. The MSCCSP unanimously accepts the Guidelines Subcommittee’s recommendation to move forward with the MAGS draft plan, to seek permission from the Judiciary for the continued use of the MAGS application in Montgomery County after the pilot, and to begin a gradual roll-out to the remaining jurisdictions.

The MSCCSP also unanimously approves the Guidelines Subcommittee's recommendation regarding access to submitted guidelines worksheets in MAGS, adopting the conservative approach requiring an e-mail request from a judge for access to a submitted guidelines worksheet. It is suggested that the new judiciary case management system, Maryland Electronic Courts (MDEC), should have the capability to create flags to prevent a case from being closed without a guidelines worksheet being completed. The Commission unanimously approves a motion to send a letter to Judge Ben Clyburn, Chair of the Maryland Electronic Courts Advisory Committee, requesting that MDEC include a means of tracking whether a guidelines worksheet has been completed for a case where completion is statutorily required.

September 19, 2012 – Judge Leasure and Dr. Soulé send a letter to Judge Clyburn, Chair of the Maryland Electronic Courts Advisory Committee, to request that the MDEC include a process for verification that a guidelines worksheet has been completed for all relevant circuit court cases prior to closing out a case at sentencing.

September 20, 2012 – The Maryland Electronic Courts Advisory Committee reviews the request of September 19, 2012.

September 21, 2012 – The MSCCSP staff conducts a pilot project feedback teleconference with MAGS users in Montgomery County. All Montgomery County Circuit Court judges are invited to participate in this feedback session. Additionally, Ms. Harris invites representatives from the State's Attorney's Office, the Public Defender's Office, and the regional Parole & Probation Office to participate.

September 24, 2012 – The AOC approves the MSCCSP request to continue utilizing the MAGS application in the MCCC after the conclusion of the six-month pilot period on November 7, 2012.

October 16, 2012 – At Ms. Harris' request, Ms. Matthews postpones the planned receipt of the Montgomery County Court evaluation. The evaluation will be reviewed by the Conference of Circuit Judges at the March 18, 2013 meeting. The Montgomery County researchers requested the postponement to allow adequate time to evaluate the full six-month pilot project. The recommendations of the evaluation will be reviewed by the MSCCSP and incorporated into the MAGS User Protocol, which will guide use of the application if and when it is gradually implemented in other jurisdictions.

October 16, 2012 – Dr. Soulé receives a response from Joan Nairn, MDEC Project Director, indicating that the Judiciary has spent months reviewing the vendor’s current product and comparing it to the needs of the Maryland Judiciary. The Judiciary is currently in the process of prioritizing those needs to determine what will be required development for the MDEC pilot and what things may be developed in future releases. Ms. Nairn further indicates that she provided a copy of the MSCCSP letter to the review committee, and they will consider the MSCCSP request as the AOC prioritizes and finalizes their development list.

October 18, 2012 – Dr. Soulé presents testimony to the Court of Appeals at a public meeting regarding MDEC. During his testimony, Dr. Soulé notes that while the MSCCSP believes that guidelines worksheets are completed for the majority of relevant cases, the MSCCSP recently completed a detailed review of a sample of guidelines cases from the circuit courts, and there is evidence of cases where a guidelines worksheet was required but not completed or submitted. Given the results of this review and the statutory mandate for the court to consider the guidelines at sentencing, Dr. Soulé notes that the MSCCSP believes that it may be mutually beneficial for the Judiciary and the MSCCSP if the MDEC system would include a check to indicate that a guidelines worksheet has been completed for all relevant circuit court cases prior to closing out a case at sentencing. Dr. Soulé indicates that the MSCCSP respectfully requests that the Judiciary make this request a priority and plan to include this data check in the initial release of MDEC. The Court acknowledges receipt of the MSCCSP’s request and encourages the MSCCSP to continue to work with Judge Clyburn’s committee.

October 24, 2012 – Dr. Soulé meets with the Information Technology and Communications Division (ITCD) of DPSCS to share feedback from the pilot project and to discuss updates to the model. At this meeting, Dr. Soulé presents a list of 24 updates/enhancements to MAGS that were identified by staff based on feedback from the Montgomery County pilot project. Some are minor cosmetic enhancements, while others are more substantial changes to how the relevant information is captured in the application. DPSCS agrees to review the requested enhancements and report back on whether they are able to complete all of the requests and the expected timeframe for completion.

November 9, 2012 – DPSCS notifies the MSCCSP that they have agreed to perform all but one of the requested enhancements. The exception is the request to make MAGS compatible with web browsers other than *Internet Explorer*. In particular, the MSCCSP had requested compatibility with *Safari* so that MAGS could be used on an *iPad*. DPSCS advises that they are not able to institute compatibility with other web browsers at this time as this particular

enhancement would cost approximately \$14,000 to implement and ITCD cannot support this added expense. DPSCS indicates that the anticipated start date for the work on all of the other requested enhancements is December 2012 with an expected release date of March 2013.

December 11, 2012 – In anticipation of the approved gradual roll-out of MAGS to the 23 other jurisdictions, the MSCCSP reviews a draft MAGS User Protocol to provide to each jurisdiction as they begin to implement the use of the automated system. The protocol was established primarily based on the practices utilized in Montgomery County during the pilot project and it is expected that the protocol will be modified by each jurisdiction according to the jurisdiction's operational procedures. The protocol details the following:

- When MAGS should be utilized
- Who is responsible for initiation, completion, and submission of guidelines worksheets
- User access levels, as approved by the MSCCSP
- Information on how to access MAGS
- Information on the MAGS User Manual and other training tools
- Information on system requirements.

The MSCCSP expects that the MAGS User Protocol will be further refined after reviewing the recommendations of the evaluation of the MAGS pilot project by the MCCC. The evaluation is expected to be completed in March 2013.

Sentencing/Correctional Simulation Model

In conjunction with consultants at Applied Research Services Inc. (ARS), the MSCCSP completed initial development on a sentencing/correctional simulation model to help project the potential impact of proposed changes to the sentencing guidelines on the correctional population. In anticipation of the availability of the completed model, an interagency committee was created to review the technological features of the model and to help guide its use. Judge Leasure appointed Dr. Wellford along with staff as the MSCCSP representatives for the committee. DPSCS appointed four representatives from their agency: Bonita Cosgrove, DPSCS, Director of Integrated Program Services; Rebecca Gowen, DPSCS, Chief, Strategic Planning, Office of Grants, Policy and Statistics; Christina Lentz, DPSCS, Executive Director, Office of Grants, Policy, and Statistics; and Randy Watson, Division of Corrections, Assistant Commissioner, Programs & Services. The simulation model committee held its first meeting on August 21, 2012. During the meeting, Dr. John Speir from ARS provided a presentation on the model's capabilities. The meeting was an opportunity for the committee to hear about the technical capabilities of the model and to share feedback.

In 2012, the MSCCSP staff participated in multiple training sessions directed by Dr. Speir to work on learning the intricacies of operating the simulation model. These training sessions will continue into 2013. At the September 18, 2012 meeting, the Commission noted that the simulation model has the potential to be a powerful tool, and there may likely be requests for its use outside of the MSCCSP. Questions were raised as to whether the MSCCSP will have sufficient staff and resources to respond to all requests regarding the model. It was noted that given the model's complexities, additional resources would likely be necessary to determine how the model can be used, the scope of its use, and how it might be used in conjunction with DPSCS.

Public Comments Hearing

The MSCCSP recognizes the importance of providing a forum for the public to discuss sentencing-related issues. To this end, the MSCCSP holds an annual public comments hearing. The 2012 public comments hearing was held at the House Office Building in Annapolis on December 11, 2012. The MSCCSP sent an invitation to the hearing to various key stakeholders throughout the state and announced the hearing on the Commission's website, the Maryland Register, the Maryland General Assembly's hearing schedule, and a press release by the DPSCS. The MSCCSP is appreciative of the testimony provided by members of the public, as it believes that the public's participation is essential to creating awareness of these issues.

Nine individuals testified during the 2012 public comments hearing, addressing a range of topics. Mr. Walter Lomax advocated his belief in the need to change the current policy on parole for minors serving parole-eligible life sentences and individuals convicted under the felony murder statute. Dr. Amel Anderson spoke about the prosecution and imprisonment of juveniles as adults in Maryland. Dr. Edward Sabin addressed the Commission regarding his research on the application of the felony murder rule in Maryland. Mr. James Johnston commented on the use of juvenile court involvement in calculating the Offender Score, with an emphasis on the considerations that factor into juvenile commitment. Ms. Janis Everette and Mr. Dion Everette spoke about the incarceration of a family member, Eric Jerome Everette. Ms. Lea Green commented on parole for individuals serving life sentences, as well as the over-reliance on incarceration. Two additional individuals presented written testimony that was read on their behalf, as neither was able to attend the public comments hearing. Ms. Clara Mathews' comments addressed issues regarding life sentences and opportunities for parole. Ellen Jensen's testimony focused on the Governor's role in parole for individuals serving life sentences. In sum, these testimonials shed light on important issues that impact criminal justice

practitioners and agencies throughout the state. A detailed account of each individual's testimony has been recorded in the minutes of the public comments hearing. Additionally, the minutes include a copy of the written testimony that was provided by some of the speakers. These minutes will be available on the MSCCSP website after they have been reviewed and approved at the next Commission meeting scheduled for May 2013.

SENTENCES REPORTED IN FY 2012

Maryland's voluntary sentencing guidelines apply to criminal cases prosecuted in circuit court, with the exception of the following: prayers for a jury trial from the district court, unless a pre-sentence investigation (PSI) is ordered; appeals from the district court, unless a PSI is ordered; crimes that carry no possible penalty of incarceration; first degree murder convictions if the death penalty is sought under Criminal Law Article, §2-303, Annotated Code of Maryland; and violations of public laws and municipal ordinances. The data and figures presented in this report are limited to guidelines cases where a guidelines worksheet was submitted to the MSCCSP. The MSCCSP 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 guidelines matrices. The AOC compiled this data between July 1983 and June 2000. Beginning in July 2000, the MSCCSP assumed the responsibility of compiling this data from worksheets. Since that time, the MSCCSP 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

In fiscal year 2012, the MSCCSP received guidelines worksheets for 10,292 sentencing events.¹ Worksheets for 155 of the 10,292 sentencing events were submitted electronically as part of the MAGS pilot in Montgomery County. The remaining worksheets were submitted by mail to the MSCCSP office. Table 5 provides a breakdown of the number and percentage of worksheets submitted in fiscal year 2012 by circuit. The jurisdictions in each circuit are shown in Figure 1. The largest number of guidelines worksheets (2,803) was received from the Eighth Circuit (Baltimore City), while the smallest number (381) was received from the Second Circuit (Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties).

¹ A sentencing event will include multiple worksheets if the offender is being sentenced for more than three offenses and/or multiple criminal events. Worksheet totals throughout this report treat multiple worksheets for a single sentencing event as one worksheet.

Table 5. Number and Percentage of Worksheets Submitted by Circuit, Fiscal Year 2012

| Circuit | Number of Worksheets Submitted | Percent of Total Worksheets Submitted ^a |
|--------------|--------------------------------|--|
| 1 | 976 | 9.5% |
| 2 | 381 | 3.7% |
| 3 | 1,534 | 14.9% |
| 4 | 594 | 5.8% |
| 5 | 1,316 | 12.8% |
| 6 | 810 | 7.9% |
| 7 | 1,878 | 18.2% |
| 8 | 2,803 | 27.2% |
| TOTAL | 10,292 | 100.0% |

^a Percentages may not total 100% due to rounding.

Figure 1. Maryland Judicial Circuits



Source: <http://www.courts.state.md.us/clerks/circuitmap2.jpg>

Guidelines Case Characteristics

Figures 2 through 4 summarize the descriptive characteristics from the 10,292 worksheets submitted for offenders sentenced in fiscal year 2012. Most were male (88.2%) and African-American (65.2%). The median age of offenders at date of sentencing was 28 years. The youngest offender was 13, while the oldest was 85 years of age. Approximately 17% of offenders were under 21 years of age; 42% were 21-30 years old; 20% were 31-40 years old; and the remaining 21% were 41 years or older.

Figure 2. Distribution of Guidelines Cases by Gender of Offender, Fiscal Year 2012

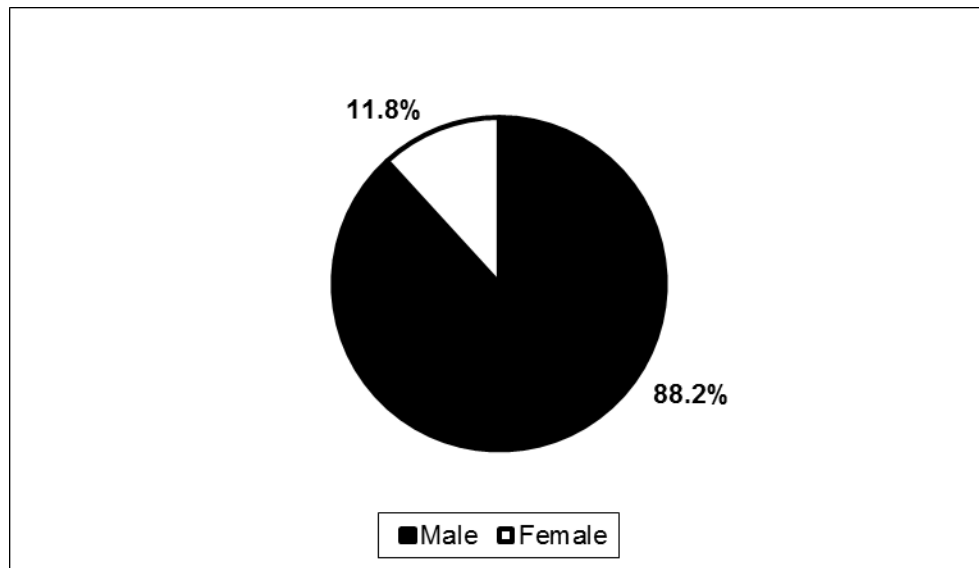


Figure 3. Distribution of Guidelines Cases by Race of Offender, Fiscal Year 2012

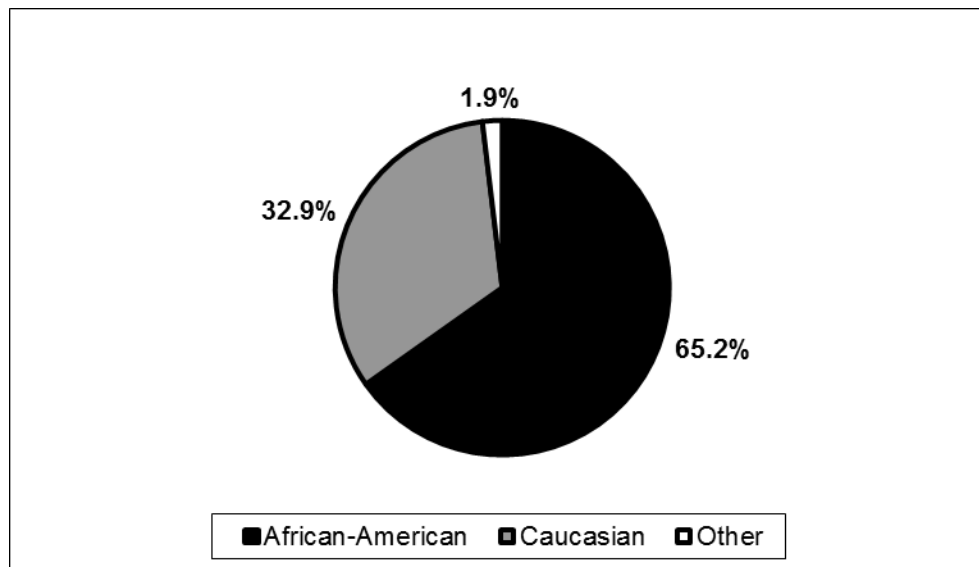
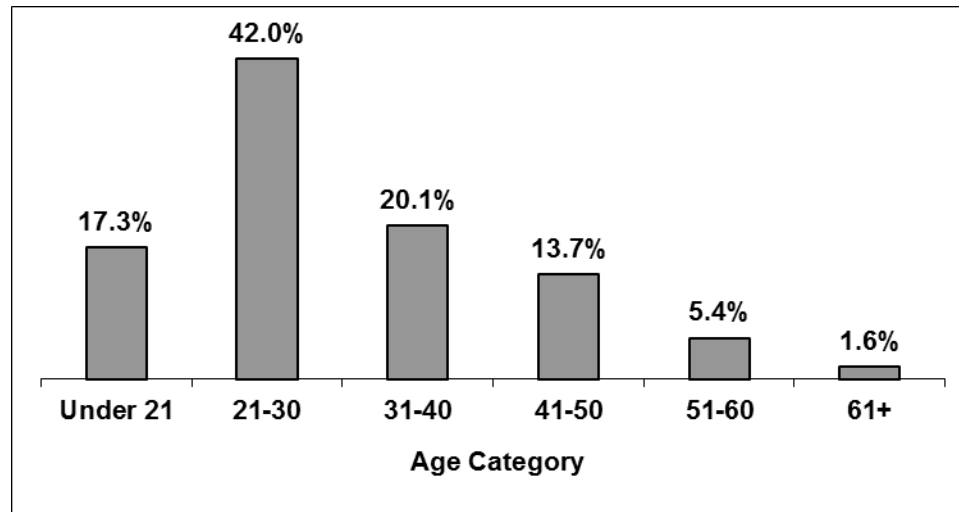


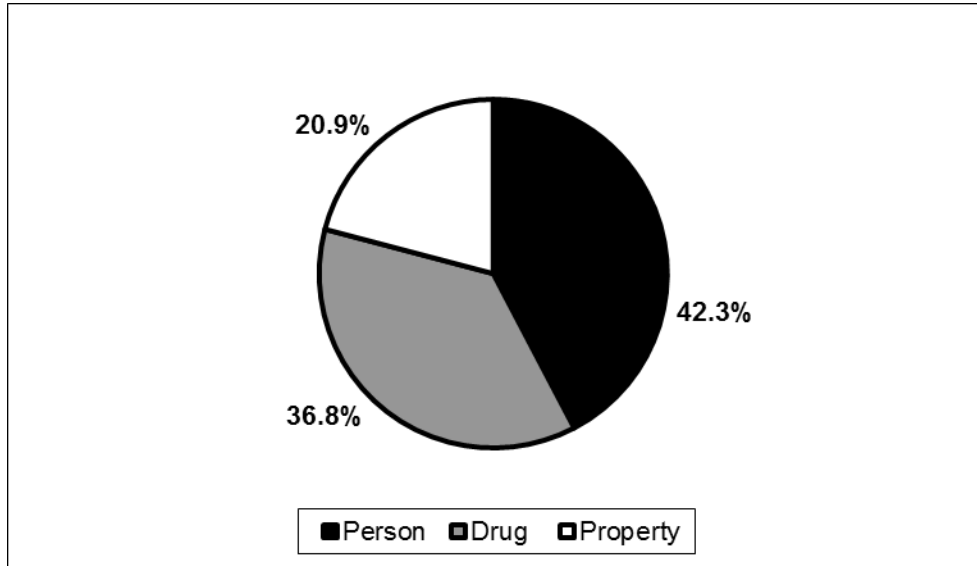
Figure 4. Distribution of Guidelines Cases by Age of Offender, Fiscal Year 2012

Figures 5 through 10 show the distribution of cases by crime category, disposition type, and sentence type. Note that the total number of cases on which the figures are based excludes reconsideration, review, and probation revocation cases (N=11).² Figure 5 provides a breakdown of cases by crime category. For cases involving multiple offenses, only the most serious offense was considered. Cases involving an offense against a person were most common (42.3%), followed closely by drug cases (36.8%). In 20.9% of cases, the most serious offense was a property crime. The distribution of cases by crime category was similar when the analysis was limited to defendants sentenced to incarceration (46.2% person, 33.3% drug, 20.5% property).³

² Effective September 1, 2009, the MSCCSP determined that a Maryland sentencing guidelines worksheet does not need to be completed for probation revocations.

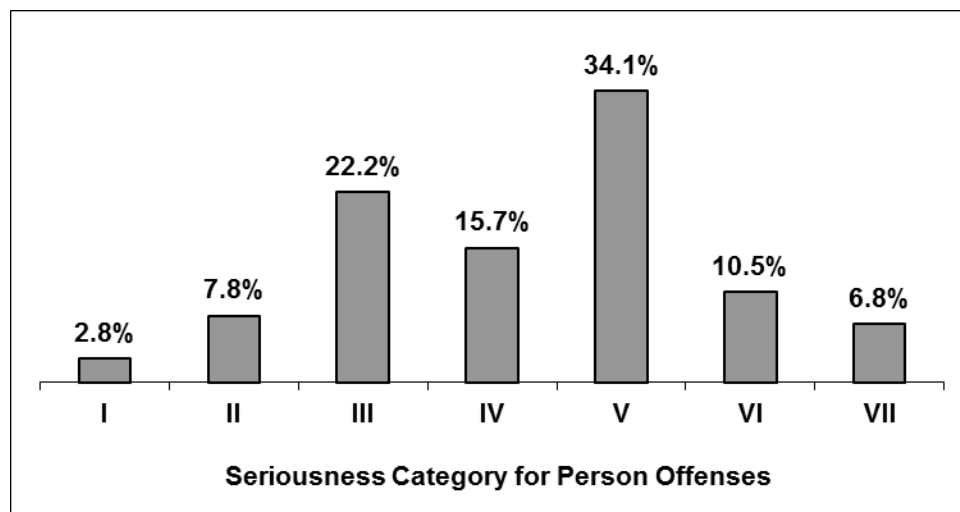
³ Incarceration includes home detention and credited time, as well as post-sentence jail/prison time.

Figure 5. Distribution of Guidelines Cases by Crime Category, Fiscal Year 2012



Figures 6a, 6b, and 6c display the distribution of cases by offense seriousness category for each of the three crime categories. In cases involving an offense against a person, offenses with a seriousness category V were most common (34.1%), followed by offenses with a seriousness category III (22.2%). *Second degree assault* was the most frequently occurring category V offense, while the most frequently occurring category III offenses included *robbery with a dangerous weapon* and *first degree assault*.

Figure 6a. Distribution of Person Offenses by Seriousness Category, Fiscal Year 2012



The distribution of drug offenses by seriousness category is summarized in Figure 6b. Approximately 82% of drug cases involved an offense with either a seriousness category IIIB (54.5%) or a seriousness category IV (27.6%). *Distribution of cocaine* and *distribution of heroin*

were the most frequently occurring category IIIB offenses, while *distribution of marijuana* was the most frequently occurring category IV offense.

Figure 6b. Distribution of Drug Offenses by Seriousness Category, Fiscal Year 2012

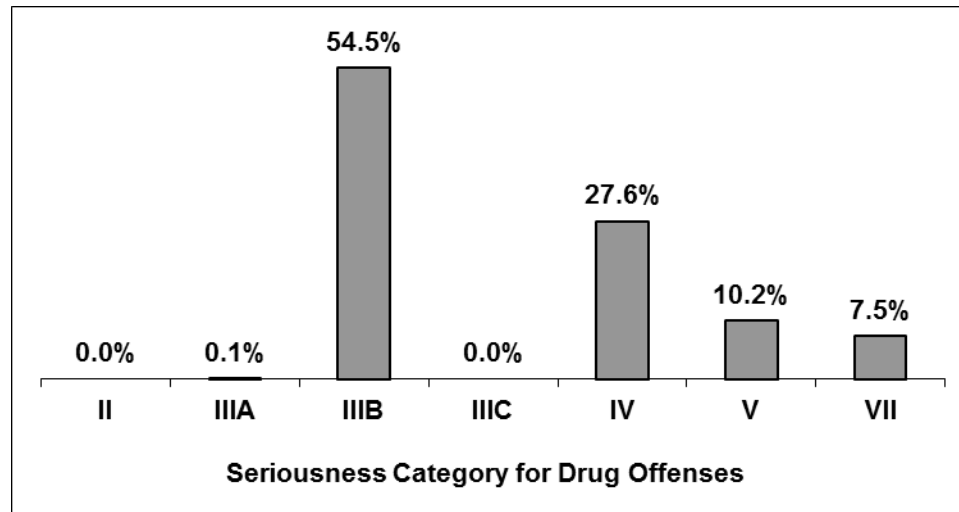


Figure 6c provides the distribution of offenses by seriousness category for property cases. Offenses with a seriousness category II (0.2%) or VI (3.3%) were far less frequent than offenses in the remaining seriousness categories. The most common property offenses included *first degree burglary* (III), *second degree burglary* (IV), *theft or theft scheme of at least \$1,000 but less than \$10,000* (V), and *theft or theft scheme of less than \$1,000 and fourth degree burglary* (VII).

Figure 6c. Distribution of Property Offenses by Seriousness Category, Fiscal Year 2012

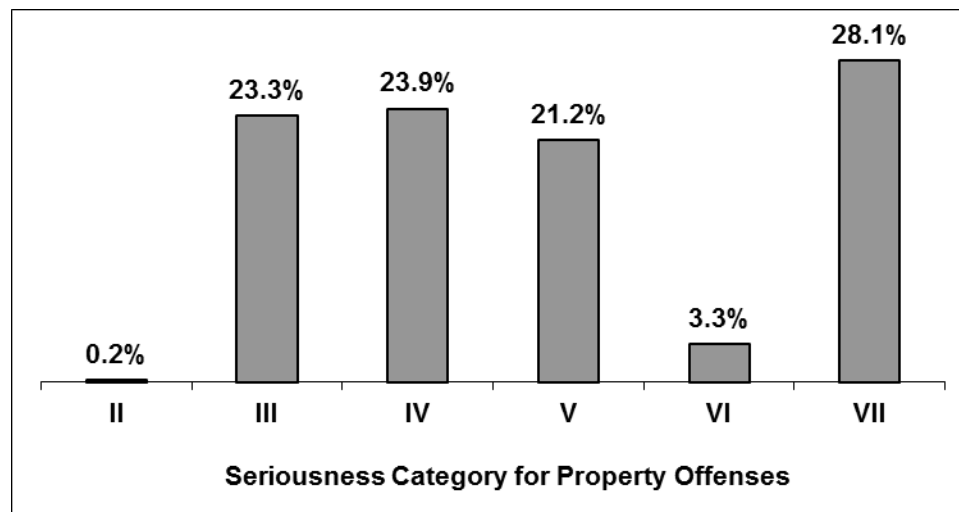
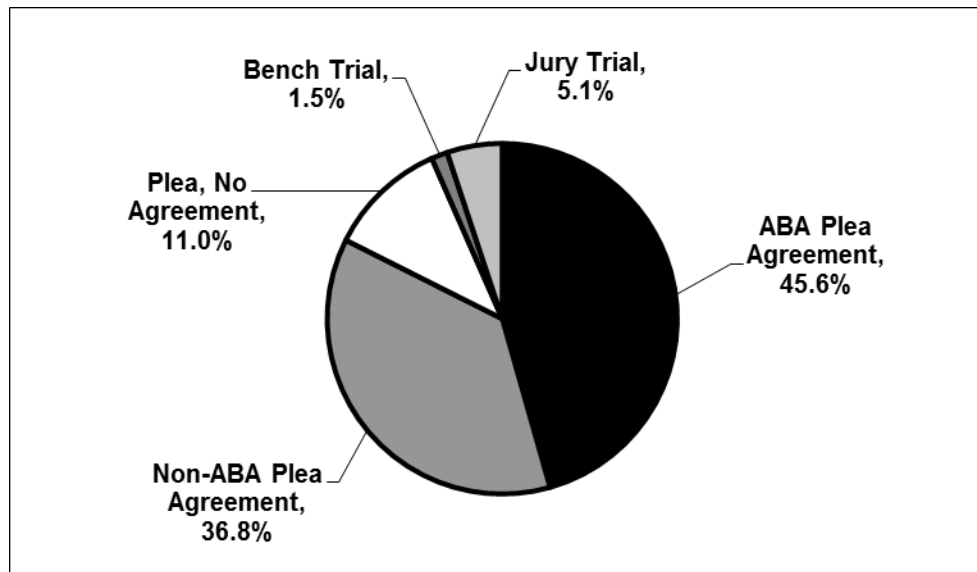


Figure 7 shows the distribution of cases by disposition type (Appendix D contains a description of the seven major disposition types listed on the sentencing guidelines worksheet). The vast majority of cases were resolved by either an ABA plea agreement (45.6%) or a non-ABA plea agreement (36.8%). An additional 11% were resolved by a plea with no agreement, and 6.6% of cases were resolved by either a bench or jury trial (1.5% and 5.1%, respectively).

Figure 7. Distribution of Guidelines Cases by Disposition, Fiscal Year 2012



The distribution of cases by sentence type is displayed in Figure 8. Few offenders (1.4%) received a sentence that did not include either incarceration or probation. Approximately 21% were sentenced to probation only. Similarly, approximately one-quarter (26.2%) of offenders were sentenced to incarceration only. More than half (51%) of all cases resulted in a sentence to both incarceration and probation. Among those who were incarcerated, 24% were incarcerated prior to sentencing only. That is, the sentence did not include any incarceration time post-sentencing.

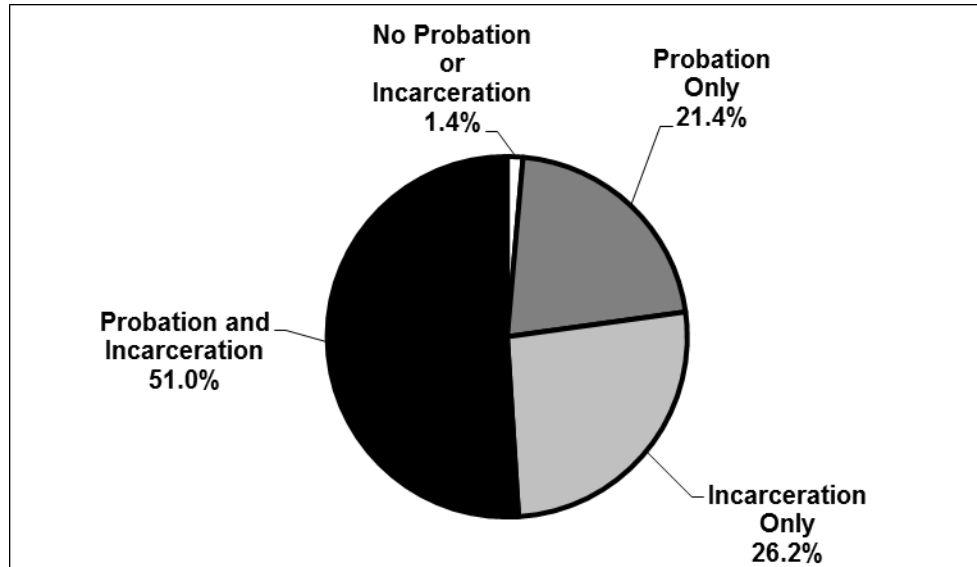
Figure 8. Distribution of Guidelines Cases by Sentence Type, Fiscal Year 2012

Figure 9 contains a breakdown of the average sentence length for the past ten fiscal years (2003-2012) among those sentenced to incarceration. The average is based on non-suspended sentence time and includes jail/prison, home detention, and credit for time served. For offenders with multiple offenses sentenced together, the sentence across all offenses was included. The figure indicates that the average sentence length among those incarcerated was relatively stable from one year to the next, ranging from a low of 3.9 years in fiscal years 2005 and 2006 to a high of 4.7 years in fiscal year 2012. The largest decrease occurred between fiscal years 2004 and 2005 (decrease of .5 years), while the largest increase occurred between fiscal years 2011 and 2012 (increase of .5 years).

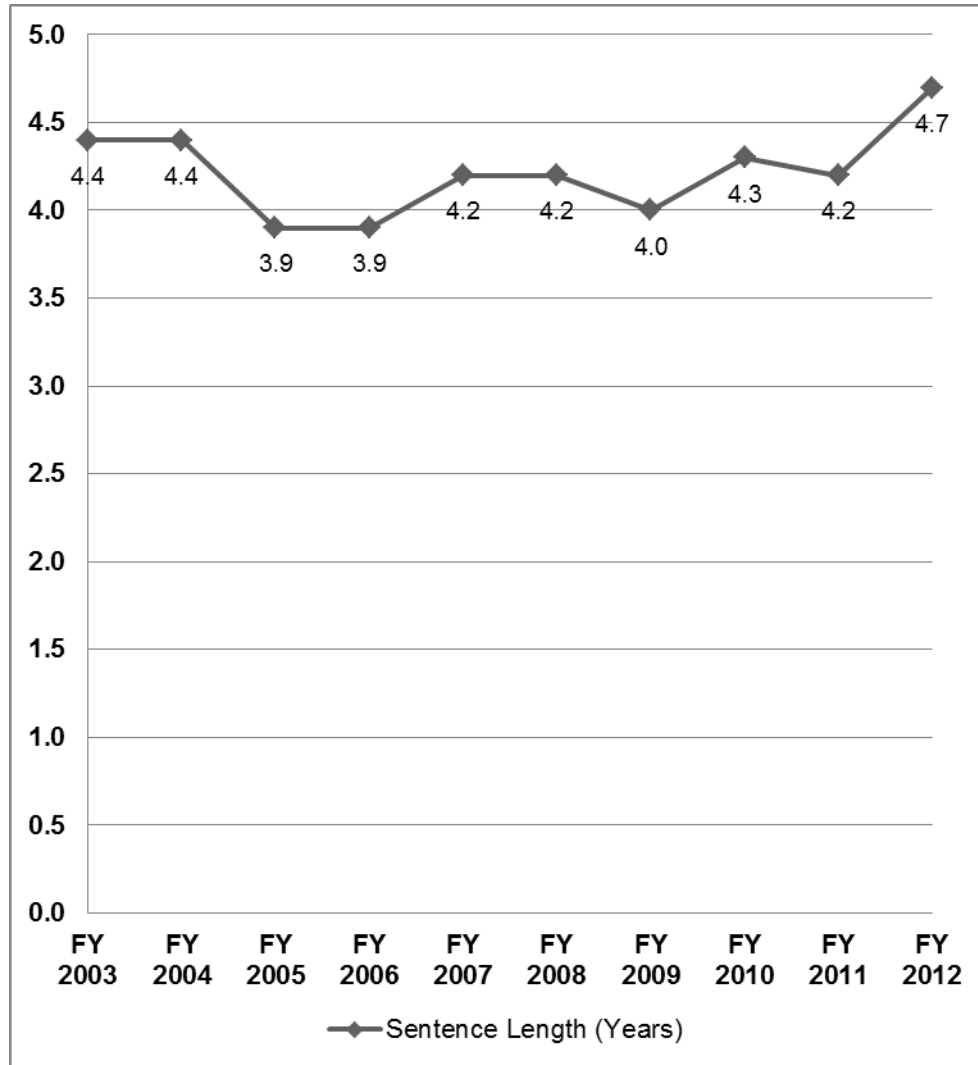
Figure 9. Average Length of Sentence for Guidelines Cases by Fiscal Year

Figure 10 summarizes the percentage of sentences that included corrections options. Corrections options are defined in COMAR 14.22.01.02 (and on page 2 of the Maryland Sentencing Guidelines Manual) as:

- Home detention;
- A corrections options program established under law which requires the individual to participate in home detention, inpatient treatment, or other similar programs involving terms and conditions that constitute the equivalent of confinement;
- Inpatient drug or alcohol counseling under Health General Article, Title 8, Subtitle 5, Annotated Code of Maryland; or
- Participation in a drug court or HIDTA substance abuse treatment program.

Further, corrections options include programs established by the State Division of Correction, provided that the program meets the Commission's criteria, as described above. A program

such as the Felony Diversion Initiative in Baltimore City, which provides inpatient drug treatment, meets the Commission's criteria of a corrections options program.

Figure 10. Distribution of Guidelines Cases by Corrections Options, Fiscal Year 2012

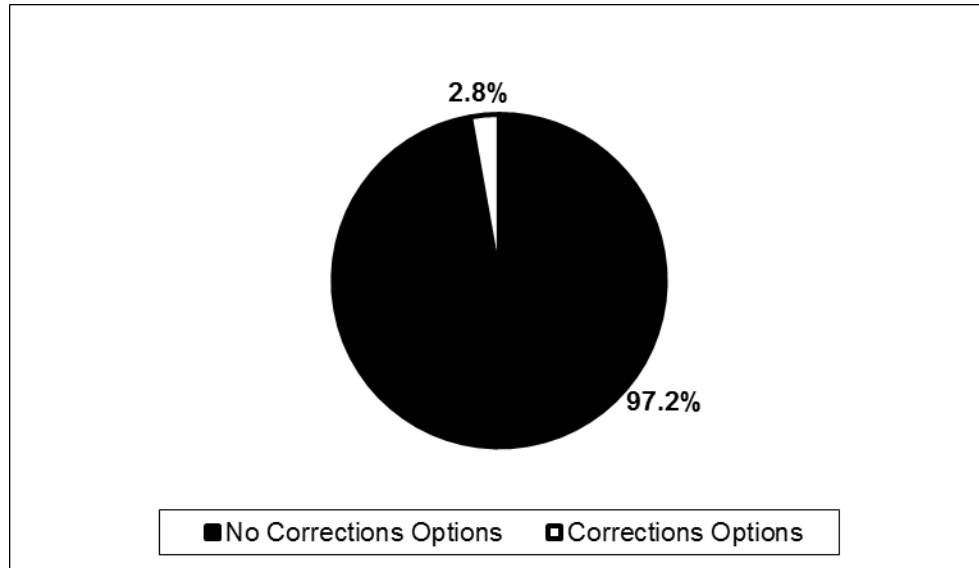


Figure 10 shows that only 2.8% of offenders were sentenced to a corrections options program in fiscal year 2012. It is important to note that the field for recording corrections options on the sentencing guidelines worksheet is often left blank. For example, the corrections options section of the worksheet was blank on 93.2% of the worksheets submitted to the MSCCSP for offenders sentenced in fiscal year 2012. The figure above assumes that in cases where the corrections options field was not completed, the offender was not sentenced to a corrections options program. To the extent that this assumption is not accurate, Figure 10 may underreport sentences to such programs.

JUDICIAL COMPLIANCE WITH MARYLAND'S VOLUNTARY SENTENCING GUIDELINES

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

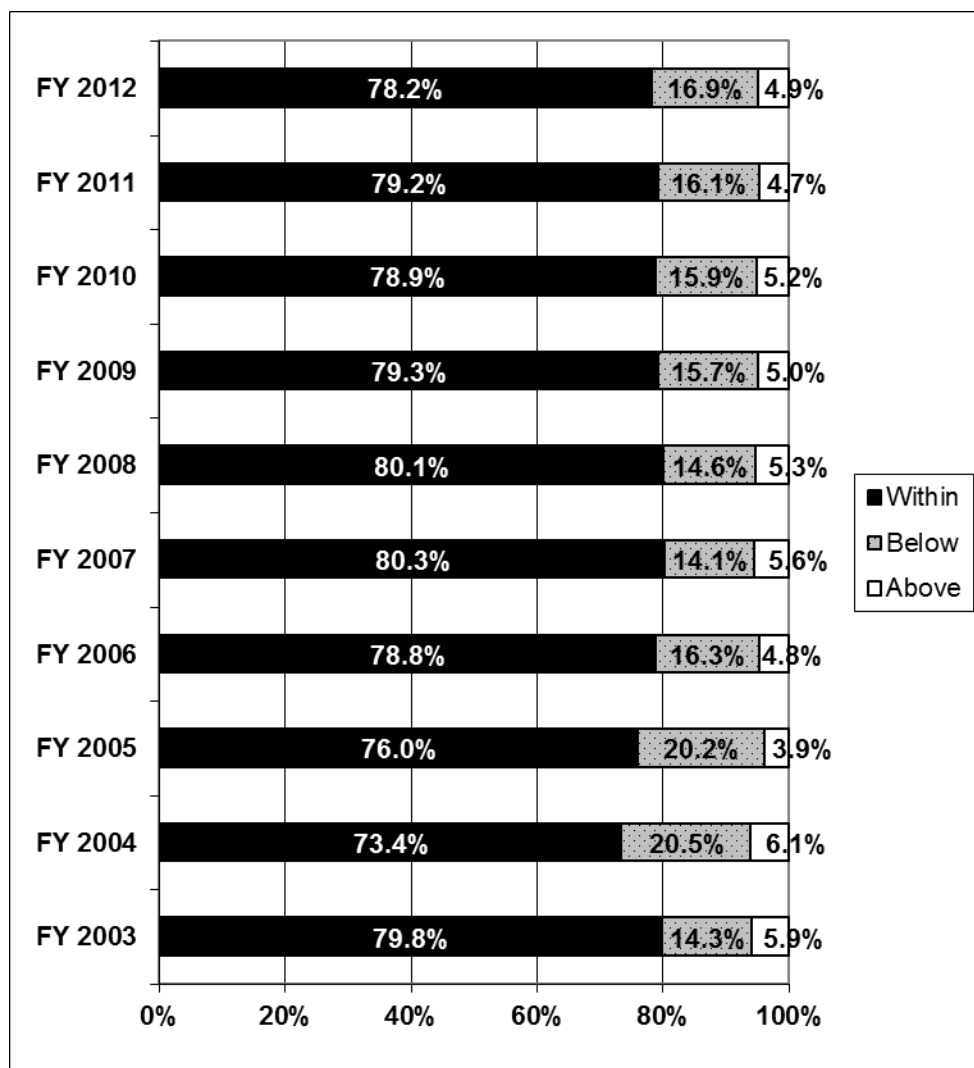
Judicial Compliance Rates Overall

A sentence is deemed compliant with the guidelines if the initial sentence (defined as the sum of incarceration, credited time, and home detention) falls within the applicable guidelines range. In addition, the MSCCSP has deemed a sentence compliant if the judge sentenced an offender to a period of pre-sentence incarceration time with no additional post-sentence incarceration time and the length of credited pre-sentence incarceration exceeds the upper guidelines range for the case. As of July 2001, all sentences pursuant to an ABA plea agreement are considered compliant (COMAR 14.22.01.17), as ABA plea agreements represent the consensus of the parties and the court within the specific community they represent. Similarly, sentences to corrections options programs (e.g., drug court; Health General Article, §8-507 commitments; home detention) are deemed compliant provided that the initial sentence plus any suspended sentence falls within or above the applicable guidelines range and the case does not include a crime of violence, child sexual abuse, or escape.

Figure 11 contains a breakdown of the overall guidelines compliance rates for the past ten fiscal years (2003-2012). The figure indicates that in all ten years, the overall rate of compliance exceeded the Commission's goal of 65% compliance.⁴ The aggregate compliance rate remained relatively unchanged from one year to the next, ranging from a low of 73.4% in fiscal year 2004 to a high of 80.3% in fiscal year 2007.

⁴ When the guidelines were originally drafted by the Judicial Committee on Sentencing in 1979, the Committee set an expectation that two-thirds of sentences would fall within the recommended sentencing range and when sentencing practice resulted in departures from the recommended range in more than one-third of the cases, the guidelines would be revised. Since that time, the Commission has adopted the goal of 65% as the benchmark standard for compliance.

**Figure 11. Overall Sentencing Guidelines Compliance by Fiscal Year
(All Cases)**

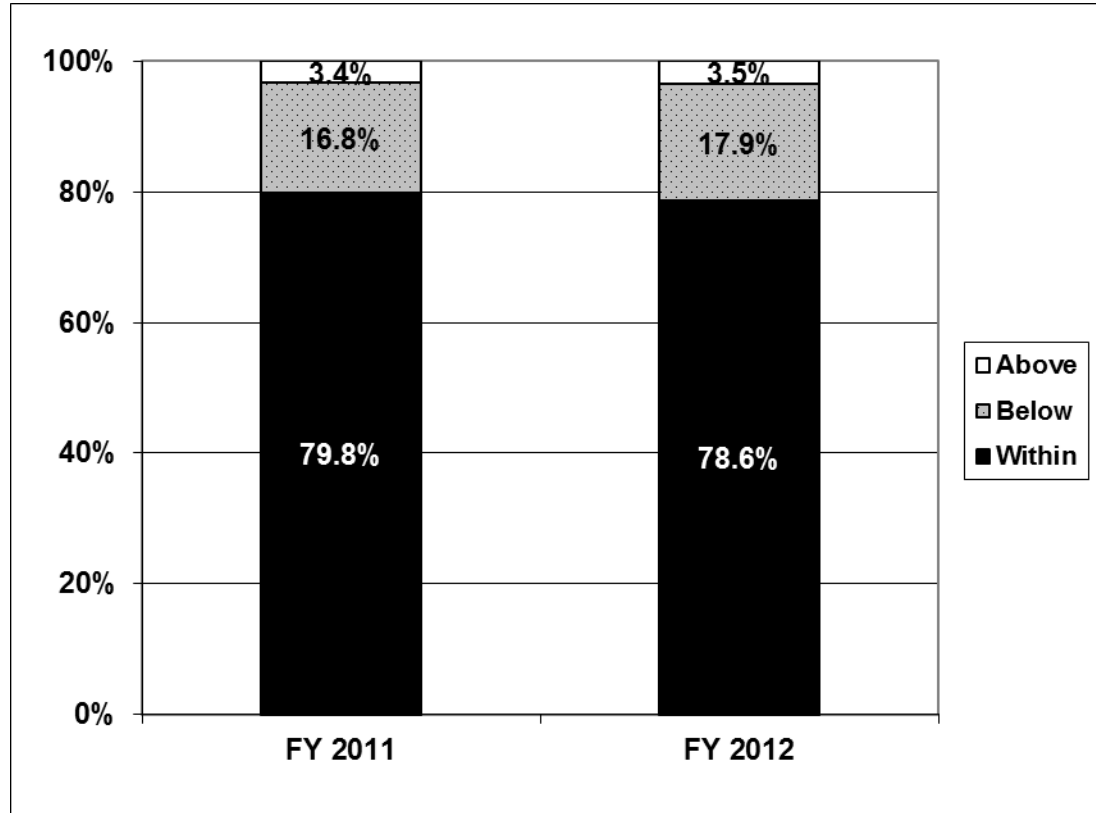


Analyses of judicial compliance in Maryland have traditionally focused on sentences for single-count convictions because they permit the most direct comparison of compliance by crime category and by offense type within the applicable cell of the sentencing matrix. Since multiple-count convictions can 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 2011 and 2012. Of the 10,292 sentencing guidelines worksheets submitted to the MSCCSP in 2012, 7,974 (77%) contained single-count convictions.

Figure 12 provides a breakdown of the overall guidelines compliance rates for fiscal years 2011 and 2012 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.

Nearly 80% of cases were compliant in both fiscal years. When departures occurred, they were more often below the guidelines than above.

Figure 12. Overall Sentencing Guidelines Compliance by Fiscal Year (Single-Count Convictions)

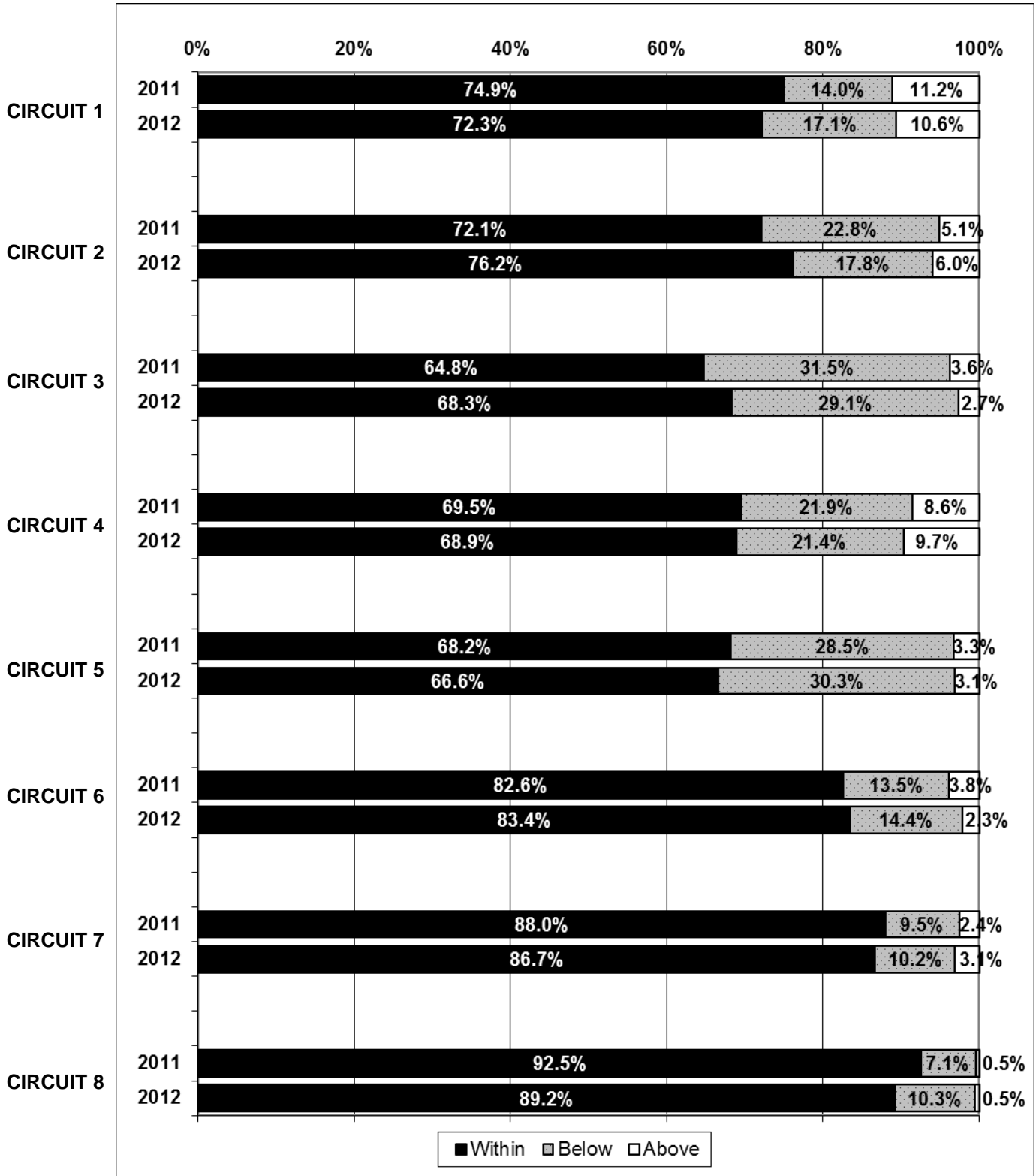


Judicial Compliance Rates by Circuit

As shown in Figure 13, all eight circuits met the 65% compliance benchmark in fiscal year 2012. The circuit with the largest number of defendants, the Eighth Circuit, had the highest compliance rate (89.2%).⁵ Compliance was lowest in the Fifth Circuit (66.6%). The largest change in compliance rates occurred in the Second Circuit, where rates increased 4.1% from 72.1% in 2011 to 76.2% in 2012.

⁵ Compliance rates were rounded to the nearest whole number to determine whether the 65% benchmark was met.

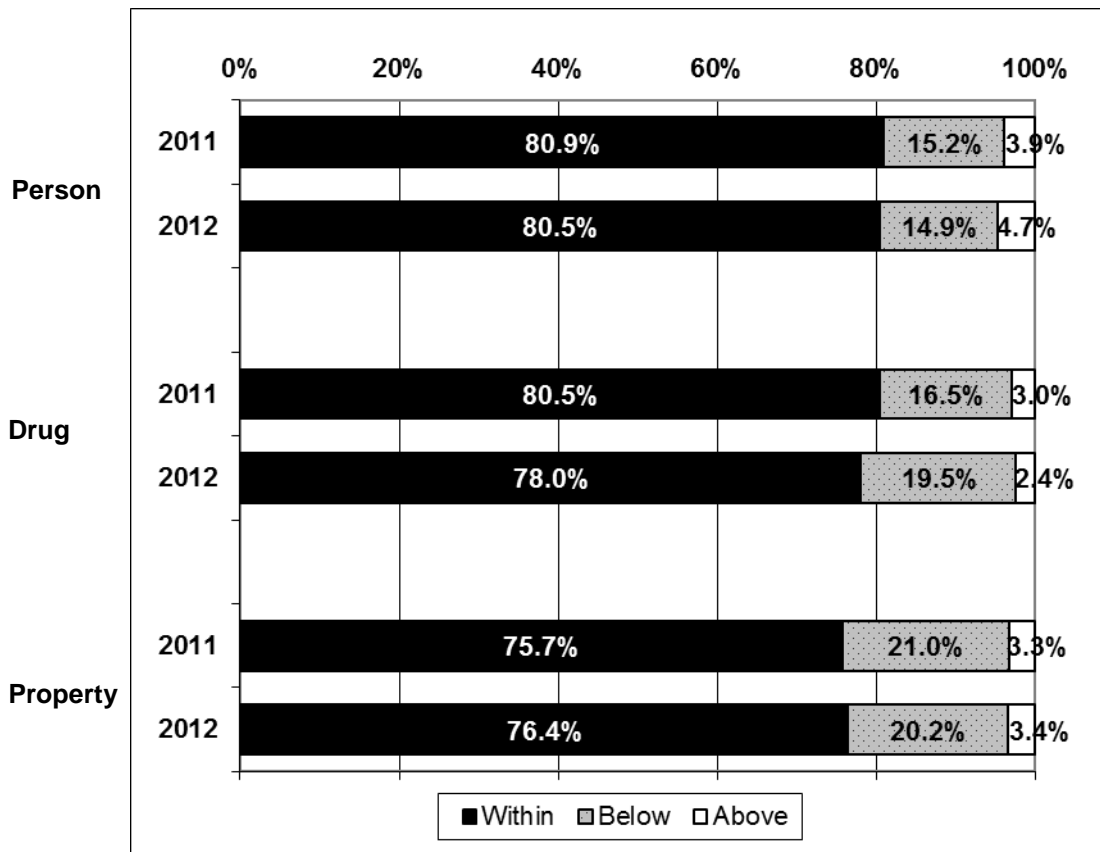
Figure 13. Sentencing Guidelines Compliance by Circuit and Fiscal Year



Judicial Compliance Rates by Crime Category

Figure 14 shows judicial compliance by crime category for fiscal years 2011 and 2012. Person offenses were the least likely to result in a departure from the guidelines in fiscal year 2012, although differences in compliance rates from one crime category to the next were negligible. The compliance rates for all three crime categories changed little from 2011 to 2012, and the 65% benchmark was met for all three crime categories in both fiscal years.⁶

Figure 14. Sentencing Guidelines Compliance by Crime Category and Fiscal Year

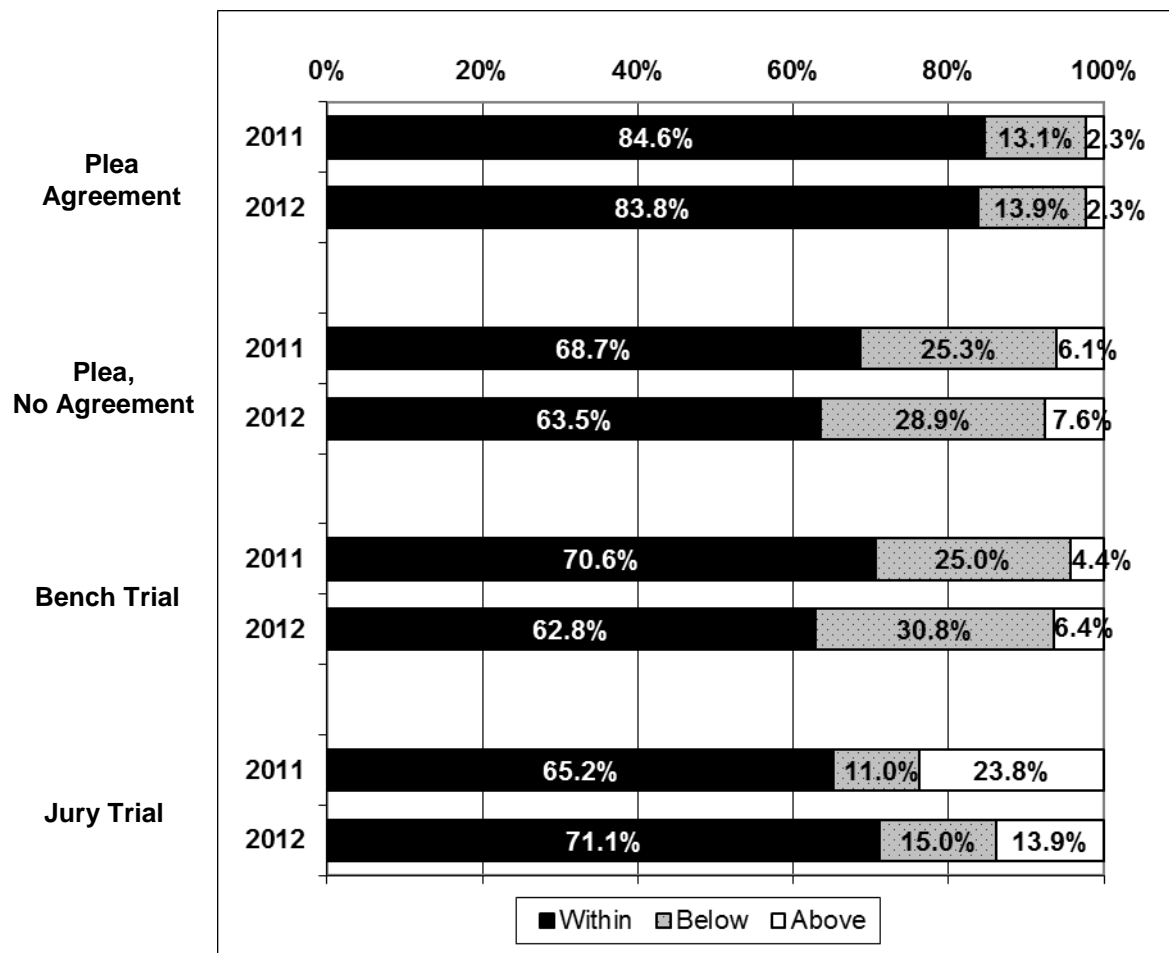


⁶ See Appendix C for sentencing guidelines compliance and average sentence for the five most common offenses in each crime category.

Judicial Compliance Rates by Type of Disposition

Figure 15 examines the extent to which judicial compliance rates varied by type of disposition (i.e., plea agreement, plea with no agreement, bench trial, and jury trial). Plea agreements accounted for the highest percentage of compliant cases (83.8%) in fiscal year 2012. This is not surprising given that the plea agreement category includes ABA pleas, which as of July 2001 are defined as compliant. In contrast, cases resolved by a bench trial and those resolved by a plea with no agreement fell just short of the 65% compliance benchmark in 2012 (62.8% and 63.5%, respectively). Compliance rates increased over the past two fiscal years only for cases adjudicated by a jury trial.

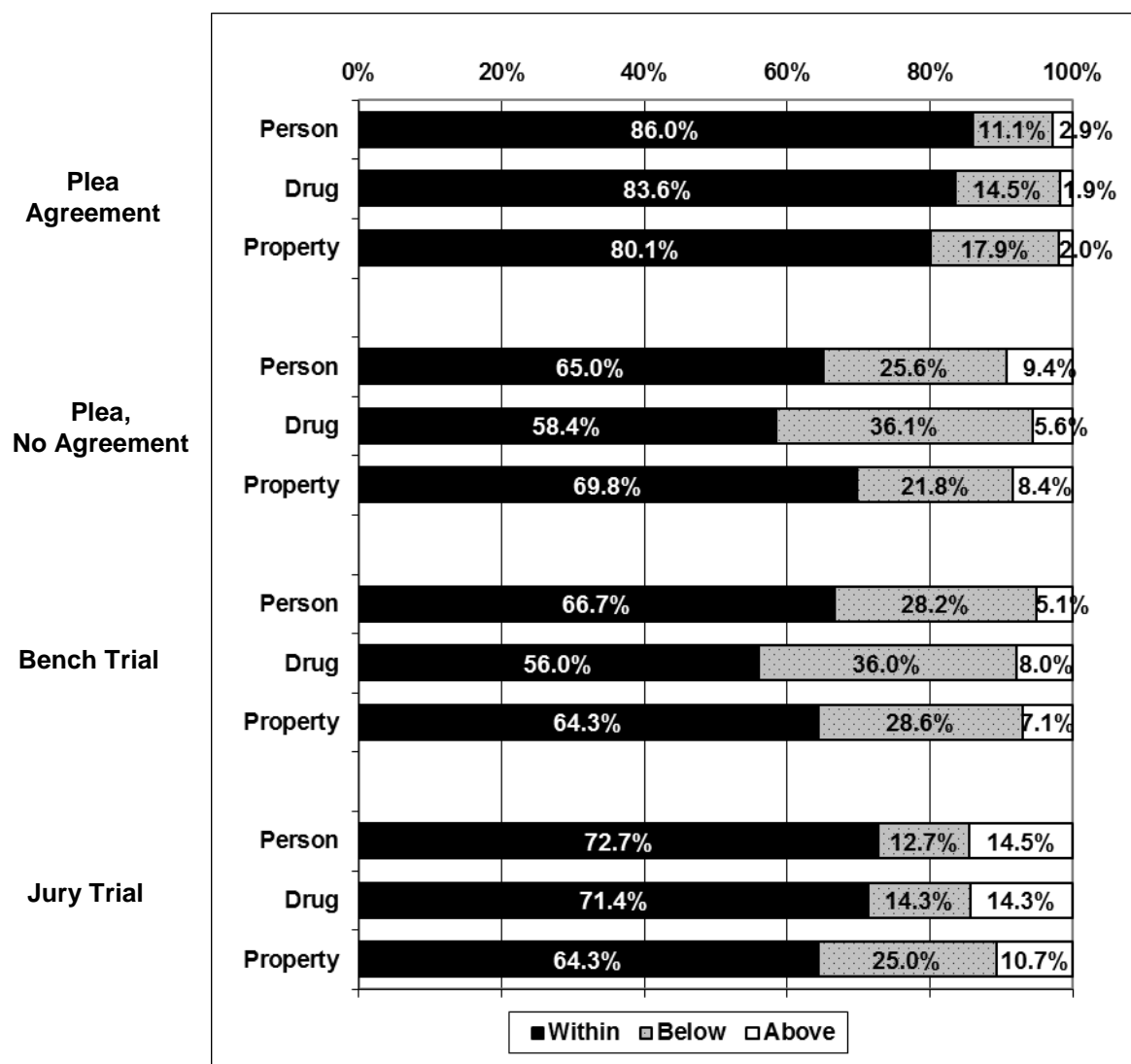
Figure 15. Sentencing Guidelines Compliance by Type of Disposition and Fiscal Year



Judicial Compliance Rates by Crime Category and Disposition

Compliance rates by crime category and disposition for fiscal year 2012 are displayed in Figure 16. It is important to keep in mind that some of the rates are based on a very small number of cases. For example, the MSCCSP received only 14 worksheets in fiscal year 2012 for single-count property offenses adjudicated by a bench trial.

Figure 16. Sentencing Guidelines Compliance by Crime Category and Disposition, Fiscal Year 2012



The highest compliance rates were observed for person, drug, and property offenses adjudicated by a plea agreement (86%, 83.6%, and 80.1%, respectively). Four compliance rates fell short of the benchmark of 65%: property offenses resolved by either a bench or jury trial (64.3%), and drug offenses resolved by either a plea with no agreement (58.4%) or a bench

trial (56%). Upward departures were most common among person offenses disposed of by a jury trial (14.5%), while downward departures occurred most often among drug offenses disposed of by a plea with no agreement (36.1%).

Departure Reasons

COMAR 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. In order to facilitate the reporting of mitigating and aggravating departure reasons on the sentencing guidelines worksheet, the MSCCSP provides judges with a reference card which lists some of the more common departure reasons and includes an accompanying numerical departure code (Appendix E contains a list of these departure reasons). The worksheet allows for up to three departure codes to be reported and also provides a space for the judge to write in other reasons not contained on the reference card.

Despite these efforts to facilitate the reporting of reasons for departing from the guidelines, departure reasons continue to be underreported. In fiscal year 2012, the reason for departure was provided in 47.2% of all departure cases. This represents a slight decrease in reporting from fiscal year 2011 (50.4%). The MSCCSP staff will continue to emphasize the need to include a reason for departure when providing training sessions. Additionally, the automated sentencing guidelines system will help facilitate the collection of departure reasons, as the departure reason is a required field that must be completed prior to the electronic submission of any sentence that is identified as a departure from the guidelines.

Tables 6 and 7 display the reasons given for departures from the guidelines in 2012. The tables include all of the reasons listed on the reference card as well as the most commonly cited "other" reasons. Table 6 provides a rank order of the mitigating reasons judges provided for cases where the sentence resulted in a downward departure. The first row of the table shows that in 54.8% of downward departures, the reason for departure was not provided. The most commonly cited reasons for downward departures were: 1) the parties reached a plea agreement that called for a reduced sentence; 2) recommendation of the State's Attorney or Division of Parole and Probation; and 3) offender's commitment to substance abuse treatment or other therapeutic program.

Table 6. Departure Reasons for Cases Below the Guidelines, Fiscal Year 2012^a

| Mitigating Reasons | Percent of Departures Where Reason is Cited | Valid Percent^b |
|---|--|----------------------------------|
| <i>No Departure Reason Given</i> | 54.8% | --- |
| The parties reached a plea agreement that called for a reduced sentence | 22.8% | 50.4% |
| Recommendation of State's Attorney or Division of Parole and Probation | 15.2% | 33.6% |
| Offender's commitment to substance abuse treatment or other therapeutic program | 5.8% | 12.8% |
| Offender's minor role in the offense | 2.7% | 6.1% |
| Offender made restorative efforts after the offense | 1.8% | 3.9% |
| Offender's age/health | 1.5% | 3.3% |
| Offender had diminished capability for judgment | 1.1% | 2.3% |
| Offender's prior criminal record not significant | 0.8% | 1.9% |
| Victim's participation in the offense lessens the offender's culpability | 0.8% | 1.9% |
| Weak facts of the case | 0.7% | 1.6% |
| Offender was influenced by coercion or duress | 0.4% | 0.8% |
| Other reason (not specified above) | 6.5% | 14.3% |

^a Multiple reasons may be cited in each case.

^b Valid percent is based on the number of cases below the guidelines where a reason is cited.

Table 7 provides a rank order of the aggravating reasons judges provided for cases where the sentence resulted in an upward departure. The first row of the table shows that in 42.5% of upward departures, the reason for departure was not provided. The most commonly cited reasons for departures above the guidelines were: 1) recommendation of the State's Attorney or Division of Parole and Probation; 2) the vicious or heinous nature of the conduct; and 3) offender's major role in the offense.

Table 7. Departure Reasons for Cases Above the Guidelines, Fiscal Year 2012^a

| Aggravating Reasons | Percent of Departures Where Reason is Cited | Valid Percent^b |
|--|--|----------------------------------|
| <i>No Departure Reason Given</i> | 42.5% | --- |
| Recommendation of State's Attorney or Division of Parole and Probation | 22.1% | 38.5% |
| The vicious or heinous nature of the conduct | 10.7% | 18.6% |
| Offender's major role in the offense | 10.4% | 18% |
| The level of harm was excessive | 10% | 17.4% |
| Special circumstances of the victim | 9.3% | 16.1% |
| Offender exploited a position of trust | 6.1% | 10.6% |
| Offender's significant participation in major controlled substance offense | 2.9% | 5% |
| Offender's prior criminal record significant | 2.5% | 4.3% |
| Offender committed a "white collar" offense | 2.1% | 3.7% |
| Plea agreement | 1.4% | 2.5% |
| Other reason (not specified above) | 11.4% | 19.9% |

^a Multiple reasons may be cited in each case.

^b Valid percent is based on the number of cases above the guidelines where a reason is cited.

ADDITIONAL INFORMATION COLLECTED IN RESPONSE TO LEGISLATIVE MANDATES

In 2002, the Maryland General Assembly passed House Bill 1143, requiring that the annual report of the MSCCSP “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.” In anticipation of this mandate, the MSCCSP revised the sentencing guidelines worksheet to capture information on reconsidered sentences, effective July 1, 2001.

More recently in 2004, the Maryland General Assembly passed House Bill 918, mandating the MSCCSP 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. In response, the MSCCSP revised the sentencing guidelines worksheet to capture the amount of economic loss to the victim in theft- and fraud-related cases, effective March 28, 2005.⁷ The available data on reconsidered sentences and economic loss for cases sentenced in fiscal year 2012 are summarized below.

Report on Adjustments from Reconsidered Sentences Involving Crimes of Violence

Table 8 reviews reconsidered sentences reported to the MSCCSP for crimes of violence as defined in Criminal Law Article, §14-101, Annotated Code of Maryland for fiscal year 2012 by circuit. The table is based on reconsidered sentences for five offenders and ten offenses. This represents a decrease from fiscal year 2011 when the MSCCSP received worksheets on reconsiderations for crimes of violence for thirteen offenders and twenty-three offenses.

Robbery with a dangerous weapon (Criminal Law Article, §3-403) was the most common violent offense in reconsidered cases reported to the MSCCSP in fiscal year 2012.

⁷ The MSCCSP adopted the following definition of economic loss: the amount of restitution ordered by a circuit court judge or, if not ordered, the full amount of restitution that could have been ordered (COMAR 14.22.01.02.B(6-1)).

Table 8. Case Reconsiderations for Crimes of Violence (CR, §14-101), Fiscal Year 2012^a

| Circuit | Offense | # of Cases |
|---------|--|------------|
| SEVENTH | Handgun Use in Felony or Crime of Violence | 1 |
| | Murder, 1 st Degree | 2 |
| | Murder, 2 nd Degree, Attempted | 1 |
| | Robbery with Dangerous Weapon | 1 |
| SIXTH | Robbery with Dangerous Weapon | 5 |

^a Table 8 is based on reconsidered sentences for 5 offenders and 10 offenses.

Economic Loss in Title 7 and Title 8 Crimes

In fiscal year 2012, 1,301 sentences for theft, fraud, and related crimes were reported to the MSCCSP. The amount of economic loss to the victim was recorded for only 281 (21.6%) of these cases. When reported, economic loss ranged in value from a minimum of no loss to a maximum of \$386,500. The average amount of loss was \$16,573. The majority of cases in which the amount of economic loss was reported on the sentencing guidelines worksheet involved a conviction for either *felony theft or theft scheme, at least \$1,000 but less than \$10,000*; *misdemeanor theft or theft scheme, less than \$1,000*; *felony theft or theft scheme, at least \$10,000 but less than \$100,000*; or *felony theft or theft scheme, \$500 or greater* (Criminal Law Article, §7-104).

MSCCSP PLANNED ACTIVITIES FOR 2013

The work of the MSCCSP in 2013 will largely be driven by pressing policy issues and concerns that develop throughout the course of the year. However, the MSCCSP has identified several activities that will likely be addressed in 2013.

In 2013, the MSCCSP will work with the Judiciary to establish a protocol for expanded use of MAGS. The MSCCSP hopes to build on the experiences of the use of the application in the Montgomery County Circuit Court to begin a gradual statewide roll-out of the automated system to the remaining jurisdictions. The MSCCSP will also work with programmers at DPSCS to refine the MAGS application based on feedback from users in Montgomery County, and expects to release an updated version of MAGS in March 2013.

The MSCCSP will continue to provide sentencing guidelines education and training and will work with the Judiciary to maintain a guidelines orientation program for all new circuit court appointees. The Commission will also continue to meet individually with circuit court county administrative judges to review sentencing guidelines data and obtain feedback on their experiences with the guidelines. Additionally, the MSCCSP will continue to explore possible funding opportunities to further study the potential use of a risk assessment instrument at sentencing.

The MSCCSP will utilize the simulation model on a limited basis during the 2013 Legislative Session to test the model's capabilities. Feedback from this use will help guide the simulation model committee in determining the necessary resources for the Commission's use of the model in future years. Additionally, the Commission's Sentencing Guidelines Subcommittee will continue to perform routine duties such as reviewing all new 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 the AELR Committee for adoption in the COMAR. The Sentencing Guidelines Subcommittee will also examine the role of the juvenile delinquency component in the calculation of the Offender Score, an issue which was highlighted at the annual public comments hearing on December 11, 2012. Specifically, the review will focus on the most appropriate indicator of an individual's delinquent conduct for the purposes of the Offender Score.

The activities described above are just a few of the many steps that will be taken by the Commission in 2013 to support the consistent, fair, and proportional application of sentencing practice in Maryland.

APPENDICES

Appendix A:

Sentencing Guidelines Matrices

| Sentencing Matrix for Offenses Against Persons (Revised 7/2001) | | | | | | | | |
|--|---------|---------|---------|---------|---------|---------|---------|-----------|
| Offender Score | | | | | | | | |
| Offense Score | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 or more |
| 1 | P | P | P-3M | 3M-1Y | 3M-18M | 3M-2Y | 6M-2Y | 1Y-3Y |
| 2 | P-6M | P-1Y | P-18M | 3M-2Y | 6M-3Y | 1Y-5Y | 18M-5Y | 3Y-8Y |
| 3 | P-2Y | P-2Y | 6M-3Y | 1Y-5Y | 2Y-5Y | 3Y-7Y | 4Y-8Y | 5Y-10Y |
| 4 | P-3Y | 6M-4Y | 1Y-5Y | 2Y-5Y | 3Y-7Y | 4Y-8Y | 5Y-10Y | 5Y-12Y |
| 5 | 3M-4Y | 6M-5Y | 1Y-6Y | 2Y-7Y | 3Y-8Y | 4Y-10Y | 6Y-12Y | 8Y-15Y |
| 6 | 1Y-6Y | 2Y-7Y | 3Y-8Y | 4Y-9Y | 5Y-10Y | 7Y-12Y | 8Y-13Y | 10Y-20Y |
| 7 | 3Y-8Y | 4Y-9Y | 5Y-10Y | 6Y-12Y | 7Y-13Y | 9Y-14Y | 10Y-15Y | 12Y-20Y |
| 8 | 4Y-9Y | 5Y-10Y | 5Y-12Y | 7Y-13Y | 8Y-15Y | 10Y-18Y | 12Y-20Y | 15Y-25Y |
| 9 | 5Y-10Y | 7Y-13Y | 8Y-15Y | 10Y-15Y | 12Y-18Y | 15-25Y | 18Y-30Y | 20Y-30Y |
| 10 | 10Y-18Y | 10Y-21Y | 12Y-25Y | 15Y-25Y | 15Y-30Y | 18Y-30Y | 20Y-35Y | 20Y-L |
| 11 | 12Y-20Y | 15Y-25Y | 18Y-25Y | 20Y-30Y | 20Y-30Y | 25Y-35Y | 25Y-40Y | 25Y-L |
| 12 | 15Y-25Y | 18Y-25Y | 18Y-30Y | 20Y-35Y | 20Y-35Y | 25Y-40Y | 25Y-L | 25Y-L |
| 13 | 20Y-30Y | 25Y-35Y | 25Y-40Y | 25Y-L | 25Y-L | 30Y-L | L | L |
| 14 | 20Y-L | 25Y-L | 28Y-L | 30Y-L | L | L | L | L |
| 15 | 25Y-L | 30Y-L | 35Y-L | L | L | L | L | L |

P=Probation, M=Months, Y=Years, L=Life

| Sentencing Matrix for Drug Offenses (Revised 10/2001) | | | | | | | | |
|---|---|----------|----------|----------|-----------|-----------|----------|------------------|
| Offender Score | | | | | | | | |
| Offense Seriousness Category | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 or more |
| VII | P | P | P | P-1M | P-3M | P-6M | 3M-6M | 6M-2Y |
| VI | Available for future use. There are currently no seriousness category VI drug offenses. | | | | | | | |
| V | P-6M | P-12M | 3M-12M | 6M-18M | 1Y-2Y | 1.5Y-2.5Y | 2Y-3Y | 3Y-4Y |
| IV | P-12M | P-18M | 6M-18M | 1Y-2Y | 1.5Y-2.5Y | 2Y-3Y | 3Y-4Y | 3.5Y-10Y |
| III-A Marijuana import 45 kilograms or more, and MDMA over 750 grams | P-18M | P-2Y | 6M-2Y | 1Y-4Y | 2Y-6Y | 3Y-8Y | 4Y-12Y | 10Y-20Y |
| III-B Non-marijuana and non-MDMA, Except Import | 6M-3Y | 1Y-3Y | 18M-4Y | 3Y-7Y | 4Y-8Y | 5Y-10Y | 7Y-14Y | 12Y-20Y |
| III-C Non-marijuana and non-MDMA, Import | 1Y-4Y | 2Y-5Y | 3Y-6Y | 4Y-7Y | 5Y-8Y | 6Y-10Y | 8Y-15Y | 15Y-25Y |
| II | 20Y-24Y | 22Y-26Y | 24Y-28Y | 26Y-30Y | 28Y-32Y | 30Y-36Y | 32Y-37Y | 35Y-40Y |

P=Probation, M=Months, Y=Years

| Sentencing Matrix for Property Offenses (Revised 7/2001) | | | | | | | | |
|--|----------|----------|----------|----------|----------|----------|----------|------------------|
| Offender Score | | | | | | | | |
| Offense Seriousness Category | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 or more |
| VII | P-1M | P-3M | 3M-9M | 6M-1Y | 9M-18M | 1Y-2Y | 1Y-3Y | 3Y-5Y |
| VI | P-3M | P-6M | 3M-1Y | 6M-2Y | 1Y-3Y | 2Y-5Y | 3Y-6Y | 5Y-10Y |
| V | P-6M | P-1Y | 3M-2Y | 1Y-3Y | 18M-5Y | 3Y-7Y | 4Y-8Y | 8Y-15Y |
| IV | P-1Y | 3M-2Y | 6M-3Y | 1Y-4Y | 18M-7Y | 3Y-8Y | 5Y-12Y | 10Y-20Y |
| III | P-2Y | 6M-3Y | 9M-5Y | 1Y-5Y | 2Y-8Y | 3Y-10Y | 7Y-15Y | 15Y-30Y |
| II | 2Y-5Y | 3Y-7Y | 5Y-8Y | 5Y-10Y | 8Y-15Y | 10Y-18Y | 12Y-20Y | 15Y-40Y |

P=Probation, M=Months, Y=Years

Appendix C:

Sentencing Guidelines Compliance and Average Sentence by Offense Type, Fiscal Year 2012 (Most Common Person, Drug, and Property Offenses)

| Person Offenses | N | Guidelines Compliance | | | % Incarc. | Average Sentence Among Incarcerated | |
|---|-----|-----------------------|-------|-------|-----------|-------------------------------------|-----------------------|
| | | Within | Below | Above | | Total Sentence | Total, Less Suspended |
| Assault, 2 nd Degree | 843 | 83% | 12.8% | 4.2% | 69.4% | 5 years | 1.4 years |
| Robbery | 402 | 87.1% | 11.9% | 1% | 87.3% | 8.6 years | 2.7 years |
| Assault, 1 st Degree | 248 | 75% | 20.2% | 4.8% | 93.1% | 12.6 years | 5.1 years |
| Robbery with Dangerous Weapon | 225 | 73.8% | 23.1% | 3.1% | 93.8% | 11.6 years | 5.3 years |
| Handgun, unlawful wearing or carrying, 1 st weapon offense | 132 | 86.4% | 12.9% | 0.8% | 70.5% | 2.4 years | 1 year |
| Drug Offenses | | | | | | | |
| Distribution Cocaine | 816 | 72.8% | 26.5% | 0.7% | 72.5% | 8 years | 3 years |
| Distribution Marijuana | 784 | 85.6% | 13% | 1.4% | 59.9% | 3.1 years | 0.8 years |
| Distribution Heroin | 559 | 80.3% | 18.8% | 0.9% | 71.9% | 7.1 years | 2.1 years |
| Possession Marijuana | 221 | 90% | 0% | 10% | 38.5% | .7 years | 0.2 years |
| Possession Cocaine | 122 | 80.3% | 18% | 1.6% | 68.9% | 2.7 years | 1.1 years |
| Property Offenses | | | | | | | |
| Burglary, 1 st Degree | 349 | 77.1% | 21.8% | 1.1% | 84.2% | 8.5 years | 3 years |
| Burglary, 2 nd Degree | 220 | 71.8% | 27.7% | 0.5% | 78.2% | 6.8 years | 2.4 years |
| Theft or Theft Scheme, At Least \$1,000 but Less Than \$10,000 | 219 | 76.3% | 20.5% | 3.2% | 70.3% | 5.8 years | 1.9 years |
| Theft or Theft Scheme, Less Than \$1,000 | 193 | 76.7% | 18.7% | 4.7% | 64.8% | 1.3 years | 0.6 years |
| Burglary, 4 th Degree | 151 | 74.2% | 21.2% | 4.6% | 68.2% | 2.2 years | 0.7 years |

Appendix D:

Description of Types of Disposition

| Disposition Type | Description |
|-------------------------|---|
| ABA Plea Agreement | The disposition resulted from a plea agreement that the court approved relating to a particular sentence, disposition, or other judicial action, and the agreement is binding on the court under Maryland Rule 4-243 (c). |
| Non-ABA Plea Agreement | The disposition resulted from a plea agreement reached by the parties but that was not approved by, and thus not binding on, the court. |
| Plea, No Agreement | The defendant pled guilty without any agreement from the prosecutor or judge to perform in a particular way. |
| Bench Trial | The disposition resulted from a trial without a jury in which the judge decided the factual questions. |
| Jury Trial | The disposition resulted from a trial in which the jury decided the factual questions. |
| Reconsideration | Reconsideration of a previously imposed sentence. |
| Review | Pursuant to Criminal Procedure Article, §8-105, a panel review of a previously imposed sentence. |

Appendix E:

Common Departure Reasons Listed on the Sentencing Guidelines Departure Reference Card

| Departure Code | Mitigating Reasons |
|----------------|--|
| 1 | The parties reached a plea agreement that called for a reduced sentence. |
| 2 | Offender's minor role in the offense. |
| 3 | Offender was influenced by coercion or duress. |
| 4 | Offender had diminished capability for judgment. |
| 5 | Offender made restorative efforts after the offense. |
| 6 | Victim's participation in the offense lessens the offender's culpability. |
| 7 | Offender's commitment to substance abuse treatment or other therapeutic program. |
| 8 | Recommendation of State's Attorney or Division of Parole and Probation. |
| 9 | Other reason (not specified above). |
| Departure Code | Aggravating Reasons |
| 10 | Offender's major role in the offense. |
| 11 | The level of harm was excessive. |
| 12 | Special circumstances of the victim. |
| 13 | Offender exploited a position of trust. |
| 14 | Offender committed a "white collar" offense. |
| 15 | Offender's significant participation in major controlled substance offense. |
| 16 | The vicious or heinous nature of the conduct. |
| 17 | Recommendation of State's Attorney or Division of Parole and Probation. |
| 18 | Other reason (not specified above). |