Maryland State Commission on Criminal Sentencing Policy

Annual Report 2011

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January 2012

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 2011 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 2011. 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 2012. 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,

Judge Diane O. Leasure, (Ret.)
Chair

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EXECUTIVE SUMMARY

Maryland's voluntary sentencing guidelines were initiated statewide in 1983. In determining the appropriate sentence range, the guidelines were designed to take both offender and offense characteristics into account. The guidelines determine whether an individual should be incarcerated and if so, provide a recommended sentencing 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 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, for example: (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 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 2011, the MSCCSP classified new and amended offenses passed during the 2011 Legislative Session; reviewed and classified previously unclassified offenses; clarified the offense seriousness categories for offenses involving *buprenorphine*, *methadone*, and *oxycodone*; voted to adopt changes to the victim related and announcement of time to be served questions on the sentencing guidelines worksheet; and continued review of judicial compliance rates. The Sentencing Guidelines Subcommittee conducted a preliminary review of the definition of single versus multiple criminal events for the purpose of scoring the guidelines. The MSCCSP also provided training and education to promote the consistent application of the sentence guidelines; provided data and sentencing related information to state agencies and other interested parties; completed several data verification and data entry reviews to improve the

accuracy of the sentencing guidelines data; continued its review of risk assessment at sentencing; appointed an inter-agency committee to establish a protocol for utilizing the sentencing/correctional simulation model; and completed several critical steps to move towards the implementation of an automated sentencing guidelines system.

In fiscal year 2011, the MSCCSP received 11,013 sentencing guidelines worksheets for offenders sentenced in the state's circuit courts. The vast majority of cases were resolved by either an American Bar Association (ABA) plea agreement (48.4%) or a non-ABA plea agreement (35.4%). Approximately half of convicted defendants (53.4%) were sentenced to both incarceration and probation (as opposed to incarceration only, probation only, or neither). The overall guidelines compliance rate in fiscal year 2011 well exceeded the Commission's goal of 65% compliance. When departures occurred, they were more often below the guidelines rather 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 jury trial, and upward departures were more common than downward departures among these cases. When compliance rates by both crime category and disposition were considered, the highest compliance rate was observed for property offenses resolved by a bench trial. 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 2011. 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 2012, 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

explore possible funding opportunities to further study the potential for adopting a risk assessment instrument to be utilized at sentencing and will conduct a six month pilot program for the Maryland Automated Guidelines System (MAGS). This sample of planned activities illustrates some of the efforts to be completed by the MSCCSP in 2012 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 judicial perceptions of unwarranted sentencing disparity. The Judicial Committee on Sentencing was formed by the Court of Appeals, and a host of alternative sentencing systems were studied (e.g., determinate sentencing, mandatory sentencing, sentencing councils). In April 1979, the Committee approved a system of voluntary sentencing guidelines for use in circuit courts only. The sentencing guidelines were first piloted in four jurisdictions and were adopted statewide in 1983. In determining the appropriate sentence range, the guidelines were designed to take both offender and offense characteristics into account.

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 offenses divided into three categories: person, drug, and property. The guidelines determine whether an individual should be incarcerated and if so, provide a sentence length range. For each offense category there is a separate grid or matrix, and there is recommended sentence range in each cell of the grid. 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 offender's offense score and offender score. In drug and property offenses, the offense score is determined by the seriousness of the offense (or "seriousness category"). In offenses against persons, the offense score is determined by the seriousness of the offense, 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 calculation 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 on 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 Maryland 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 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." The MSCCSP also has authority to "adopt guidelines to identify defendants who would be appropriate for participation in corrections options programs." These guidelines are to be considered by the

sentencing court in selecting either the ordinary guidelines sentence for a defendant or sanctions under corrections options.

Pursuant to Criminal Procedure Article, §6-210, the MSCCSP is required to collect sentencing guidelines worksheets, automate the information, monitor sentencing practice and adopt changes to the sentencing guidelines matrices. In order to meet these mandates, the MSCCSP collects criminal sentencing data from Maryland state and local agencies involved in criminal sentencing via the Maryland sentencing guidelines worksheet. Worksheets are completed by criminal justice practitioners for guidelines eligible criminal cases prosecuted in circuit court to determine the recommended sentencing guidelines outcome and to record sentencing data. A copy of the Maryland sentencing guidelines worksheet is provided in Appendix B. After worksheets are 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 House of Delegates, as well as public representatives.

The Honorable Diane O. Leasure was appointed as the new chair of the MSCCSP by Governor Martin O'Malley on August 8, 2011 for a term of four years from July 1, 2011. Judge Leasure replaced the outgoing chair, the Honorable Howard S. Chasanow, who made significant contributions to the work of the MSCCSP, its predecessor Study Commission, and the original Guidelines Advisory Board. Other Governor appointees include James V. Anthenelli and Paul F. Enzinna who serve as the two public representatives on the Commission; Colonel Marcus L. Brown from the Maryland State Police; Joseph I. Cassilly, State's Attorney for Harford County; Richard A. Finci, a criminal defense attorney from Montgomery County and Prince George's County; Major Bernard B. Foster, Sr., Director of the Cecil County Detention Center; Laura L. Martin, the victims' advocacy group representative; and Dr. Charles F. Wellford from the University of Maryland, the criminal justice or corrections policy expert. LaMonte E. Cooke, Director of Correctional Services for Queen Anne's County, was appointed as the new local detention center representative effective December 15, 2011, as Major Foster moved to a new position with the Maryland State Police.

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 from the 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.

MSCCSP ACTIVITIES IN 2011

The MSCCSP met four times during 2011. Meetings were held on May 17, 2011, June 28, 2011, September 20, 2011, and December 13, 2011. In addition, the Commission's annual Public Comments Hearing was held on December 13, 2011 at the House Office Building. 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 2011.

Modifications Related to New and Amended Offenses Passed During the 2011 Legislative Session

The MSCCSP reviewed new crime legislation from the 2011 Legislative Session and identified seven offenses which required the adoption of seriousness categories for new criminal penalties. Newly adopted seriousness categories were 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 first five new offenses and their respective seriousness categories shown in Table 1 were reviewed by the MSCCSP at the June 28, 2011 meeting. These five offenses were submitted to the Administrative, Executive, and Legislative Review (AELR) Committee and were adopted in the Code of Maryland Regulations (COMAR) effective November 1, 2011. The last two new offenses were reviewed at the September 20, 2011 meeting. These two offenses and their proposed classifications were submitted to the AELR Committee and will be adopted in the COMAR effective March 1, 2012.

Table 1. Guidelines Offenses and Adopted Seriousness Categories Related to New Offenses, 2011 Legislative Session.

Legislation	Statute	Offense	Statutory Maximum	Adopted Seriousness Category
Senate Bill 178/ House Bill 162	CR, §3-602.1	**Abuse and Other Offensive Conduct** Child neglect	5 years	VI
House Bill 1252	NR, §4-1201(d)(2)	**Animals, Crimes Against** Unlawful capture of over $20,000 worth of striped bass	2 years	VII
Senate Bill 803/ House Bill 1276	TR, §27-101(h)(1), TR, §16-113(k)	**Motor Vehicle Offense** Violation of ignition interlock system participation requirements, 1st offense	1 year	VII

Table 1. Guidelines Offenses and Adopted Seriousness Categories Related to New Offenses, 2011 Legislative Session (continued).

Legislation	Statute	Offense	Statutory Maximum	Adopted Seriousness Category
Senate Bill 803/ House Bill 1276	TR, §27-101(h)(2), TR, §16-113(k)	**Motor Vehicle Offense** Violation of ignition interlock system participation requirements, subsequent	2 years	VI
House Bill 510	CR, §3-803(c)(2)	**Stalking and Harassment** Harassment, subsequent	6 months	VII
House Bill 363	CR, §2-210	**Manslaughter and Related Crimes** Criminally negligent manslaughter by vehicle or vessel	3 years	VII[a]
Senate Bill 174/ House Bill 241	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	V

[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 be collected to allow for a consideration of sentencing patterns for this offense.

The MSCCSP considered amended crime legislation from the 2011 Legislative Session and identified two offenses which required review due to various alterations to the statutory language and/or 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 and to the offense titles. 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, 2011.

Table 2. Guidelines Offenses and Adopted Seriousness Categories Related to Amended Offenses, 2011 Legislative Session.

Legislation	Statute	Offense	Prior Stat. Max. / Seriousness Category	New Stat. Max. / Seriousness Category
Senate Bill 174/ House Bill 241	PS, §5-133(c)	**Weapons Crimes—In General** Possession of regulated firearm after having been convicted of a crime of violence or select drug crimes	5 years / V (MM=5 years)	15 years / V (MM=5 years)
House Bill 519	PS, §5-133(d), PS, §5-143 (penalty)	**Weapons Crimes—In General** Possession of regulated firearm ~~or ammunition~~ by person younger than 21 years old	5 years / VI	5 years / VI[a]

[a] The Legislature repealed the prohibition against the possession of ammunition designated solely for a firearm by a person who is under the age of 21. There was no change to the penalty structure.

MM = Non-suspendable mandatory minimum penalty.

Additional Modifications to the Guidelines Offense Table in 2011

In its continued review of seriousness categories for all criminal offenses sentenced in the state's circuit courts, the MSCCSP identified two offenses that were not previously classified by the MSCCSP. The Commission reviewed the two offenses during the June 28, 2011 meeting and adopted seriousness categories and offense type classifications consistent with those for *similar* offenses. The adopted changes are noted in Table 3. These changes were submitted to the AELR Committee and were adopted in the COMAR effective November 1, 2011.

Table 3. Adopted Seriousness Categories for Previously Unclassified Offenses

Statute	Offense	Statutory Maximum	Offense Type	Adopted Seriousness Category
TR, §27-113(b), TR, §20-102	**Motor Vehicle Offense** Driver failing to remain at scene of accident with knowledge of serious bodily injury to another person	5 years	Person	V
TR, §27-113(c), TR, §20-102	**Motor Vehicle Offense** Driver failing to remain at scene of accident with knowledge of death of another person	10 years	Person	IV

Clarification on Classification of Specified Controlled Dangerous Substances

At the September 21, 2010 meeting, the MSCCSP sought to clarify the offense seriousness categories for offenses involving the following three specific substances: buprenorphine, methadone, and oxycodone. These three substances were not explicitly listed in the guidelines offense table and therefore the MSCCSP staff believed that criminal justice practitioners may find it difficult to calculate the sentencing guidelines for offenses involving these specific substances. In order to properly classify the offenses associated with these substances, the MSCCSP sought input from Dr. Ross Lowe, the Chemistry Section Manager for the Maryland State Police Lab and from Dr. Thomas Cargiulo, Director of the Maryland Alcohol and Drug Abuse Administration (ADAA), a division within the Maryland Department of Health and Mental Hygiene (DHMH). After completing a thorough statutory review and based on the information provided by Dr. Lowe and Dr. Cargiulo, the MSCCSP voted to adopt *distribution of buprenorphine* as a seriousness category IV drug offense, *distribution of methadone* as a category IIIB drug offense, and *distribution of oxycodone* as a category IIIB drug offense. These changes were submitted to the AELR Committee and were adopted in the COMAR effective

June 1, 2011. Furthermore, a *Guidelines E-News* was distributed on the same date to inform criminal justice personnel of the classification of these offenses.

Updates to the Maryland Sentencing Guidelines Worksheet

At the December 13, 2011 meeting, the MSCCSP voted to adopt minor changes to the Maryland sentencing guidelines worksheet with the intention of improving the accuracy of the data collected regarding victim rights at sentencing and whether the court made an announcement about the mandatory serving of 50 percent of a sentence for violent offenses. The revisions to the victim questions seek to clarify the information captured regarding whether the victim related courts costs as defined in Courts and Judicial Proceedings Article, §7-409, Annotated Code of Maryland, were imposed. Other minor edits to the wording of the victim questions were also adopted. The revisions to the percentage of time served field seek to clarify that this question should only be completed when a sentence of incarceration is given for a violent crime as defined in Correctional Services Article, §7-101, Annotated Code of Maryland. The MSCCSP voted to adopt the proposed amendments and to review the necessity of collecting all of the victim related information, as well as the announcement of time served for violent offenses on the guidelines worksheet. This review and discussion will be continued in 2012.

Training and Education

In an effort 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 2011, the MSCCSP provided guidelines training sessions that were attended in total by approximately 150 participants, including circuit court judges, State's Attorneys, and Public Defenders. During the past year, the MSCCSP also worked with the Criminal Law Section of the Maryland State Bar Association to set the parameters for establishing a regular, continuing legal education (CLE) program for training on the sentencing guidelines. This training would focus on private attorneys who do not regularly participate in the training sessions offered to various public agencies.

In 2011, the MSCCSP executive director met with three of the 24 county administrative judges. The meetings provided an opportunity for the MSCCSP to review sentencing guidelines related data with the individual jurisdictions and allowed the MSSCSP to receive feedback from the judges on areas of interest or concern regarding the activities of the MSCCSP.

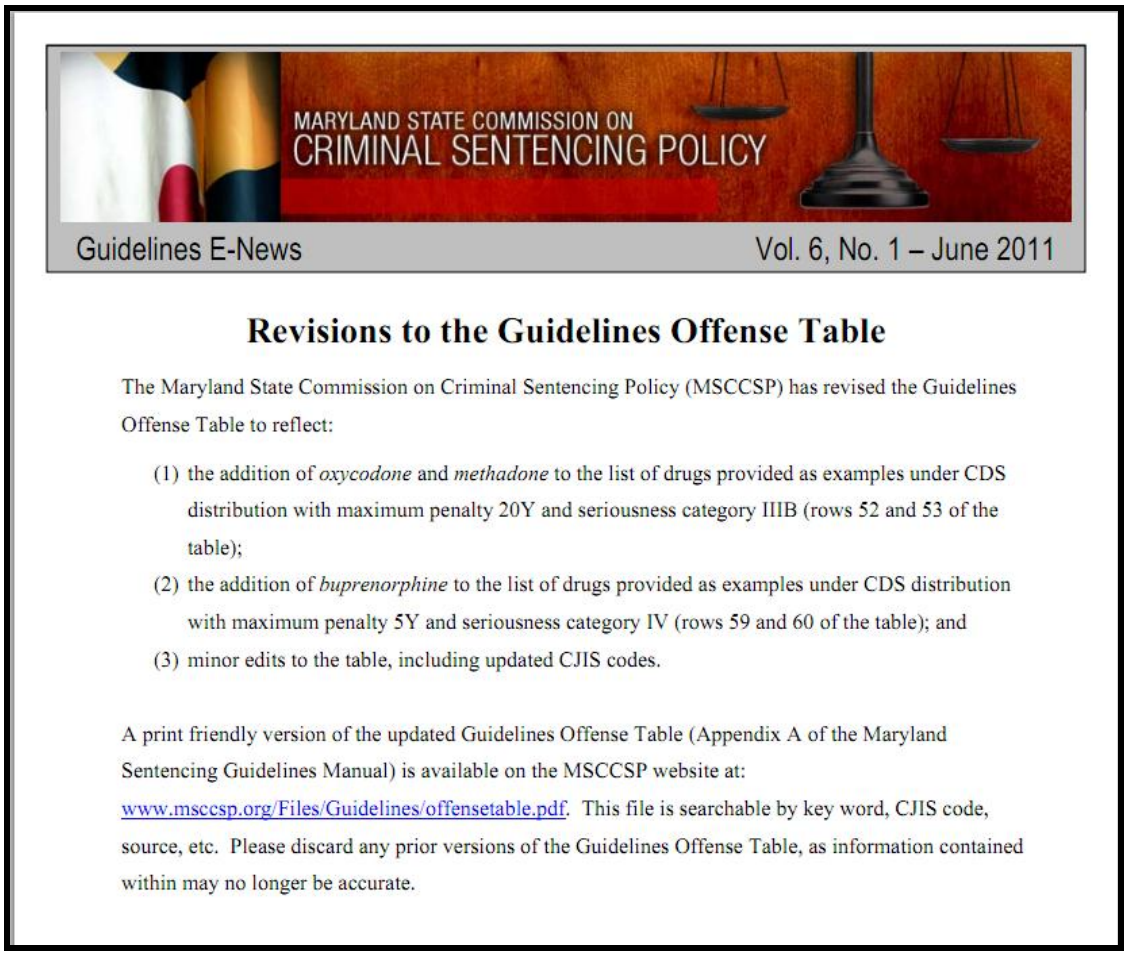
In addition to providing training and education programs, the MSCCSP staff is available via phone (301-403-4165) and e-mail (msccsp@umd.edu) from 8 a.m. to 5 p.m., Monday through Friday, to provide prompt responses to any questions or concerns regarding the sentencing guidelines. Each year the Commission staff responds to hundreds of questions regarding the guidelines via phone and e-mail inquiries. 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.msccsp.org) which is updated regularly to provide materials for criminal justice practitioners regarding the application of the guidelines. Posted materials include 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 1: MSCCSP Website.

In 2011, 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 June 2011 issue (Vol. 6, No. 1) highlighted revisions to the Guidelines Offense Table to reflect the addition of *oxycodone* and *methadone* to the list of drugs provided as example under CDS distribution with a maximum penalty of 20 years and a seriousness category of IIIB. It also highlighted the addition of *buprenorphine* to the list of drugs provided as examples under CDS distribution with a maximum penalty of five years and a seriousness category of IV. This E-News highlighted these additions in an effort to ensure that criminal justice practitioners are accurately scoring the guidelines for these offenses.

Image 2: Sample Guidelines E-News.



MARYLAND STATE COMMISSION ON CRIMINAL SENTENCING POLICY

Guidelines E-News Vol. 6, No. 1 – June 2011

Revisions to the Guidelines Offense Table

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) has revised the Guidelines Offense Table to reflect:

(1) the addition of *oxycodone* and *methadone* to the list of drugs provided as examples under CDS distribution with maximum penalty 20Y and seriousness category IIIB (rows 52 and 53 of the table);

(2) the addition of *buprenorphine* to the list of drugs provided as examples under CDS distribution with maximum penalty 5Y and seriousness category IV (rows 59 and 60 of the table); and

(3) minor edits to the table, including updated CJIS codes.

A print friendly version of the updated Guidelines Offense Table (Appendix A of the Maryland Sentencing Guidelines Manual) is available on the MSCCSP website at: www.msccsp.org/Files/Guidelines/offensetable.pdf. This file is searchable by key word, CJIS code, source, etc. Please discard any prior versions of the Guidelines Offense Table, as information contained within may no longer be accurate.

Information, Data Requests, and Outreach

In an effort to promote increased visibility and 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 2011, the Commission responded to 47 requests for data and/or specific information related to 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. In response to these inquiries, the MSCCSP typically provides 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 2011, the Commission provided information for 71 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 and to report on data collected via the sentencing guidelines worksheet. During the past year, the MSCCSP executive director: 1) presented to the Judiciary Committee on Rules of Practice and Procedure to provide information on data collected on victims' rights at sentencing; 2) presented at a roundtable discussion on the costs and benefits of risk assessment held at Penn State University; and 3) presented on activities of the MSCCSP and provided feedback on guidelines data for the 8th judicial circuit to the Baltimore City Criminal Justice Coordinating Council. Additionally, Dr. Soulé was appointed as a liaison to the Judiciary Ad Hoc Committee on Sentencing Alternatives, Reentry, and Best Practices (AHCS). The MSCCSP is also actively involved in the work of the National Association of Sentencing Commissions (NASC). NASC was established in 1992 to facilitate the exchange of information, data, expertise, and experiences on issues related to sentencing policies, guidelines, and commissions. Dr. Soulé served as the vice-president of NASC in 2011 and moderated a panel examining mandatory minimum sentences at the 2011 annual conference in Portland, Oregon.

Data Collection, Oversight, and Verification

The MSCCSP staff is responsible for 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.

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 plays a critical role in reviewing all proposed amendments and updates to the sentencing guidelines. The Guidelines Subcommittee is chaired by Dr. Charles Wellford (Professor, University of Maryland). Other members of the Guidelines Subcommittee include Richard Finci (defense attorney), Senator Delores Kelley (Baltimore County), Laura Martin (State's Attorney, Calvert County), and the Honorable Alfred Nance (Judge, Baltimore City Circuit Court). 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 from criminal justice practitioners who apply the guidelines and also reports to the overall Commission on guidelines compliance data. In 2011, the 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 Table 1 and 2, as well as the previously unclassified offenses noted in Table 3.

The Guidelines Subcommittee also began a review of the definition of a criminal event for the purpose of calculating the sentencing guidelines. One of the more common questions concerning the Maryland sentencing guidelines involves distinguishing a single event with multiple counts from multiple events. This question is an important one, as the difference in the guidelines calculation is often significant. The Guidelines Subcommittee recommended that the staff set up a database to collect information on specific inquiries regarding single versus multiple criminal events. This information will then be presented to the Guidelines Subcommittee for further review when a sufficient sample of inquiries regarding single versus

multiple events is collected. Finally, the Guidelines Subcommittee also made recommendations to the full Commission regarding the continued review of risk assessment at sentencing. This risk assessment review process is described in more detail in the next section.

Review of Risk Assessment at Sentencing

In May 2010, Dr. Soulé and Dr. Wellford first met with the Judiciary Ad Hoc Committee on Sentencing Alternatives, Reentry, and Best Practices (AHCS) to discuss the possibility that the MSCCSP would study the implementation of a risk assessment tool to be utilized at sentencing. At the subsequent MSCCSP meeting, the Commission reviewed a proposed three phase approach towards risk assessment in Maryland. Phase I would include a review of research on risk assessment, a discussion of how other states such as Virginia and Missouri have incorporated risk assessment into the sentencing process, a review of the risk assessment instruments being utilized by other agencies in Maryland, and ultimately the development of a recommendation regarding risk assessment that could be considered by the MSCCSP and the Maryland Judicial Conference. If the MSCCSP determined that the Commission should proceed with developing a risk assessment instrument to be incorporated at sentencing, the second phase of this proposed plan would include research and consideration of adopting a modified version of an existing instrument or development of a new risk assessment tool that fits with the current guidelines. Phase 2 would also likely include a search for funding to support these research activities. Phase 3 would be implementation of the risk assessment tool throughout the state.

In June 2010, the MSCCSP agreed to undertake Phase I of the risk assessment review and assigned this task to the Commission's Sentencing Guidelines Subcommittee. Phase 1 activities included an educational seminar on risk assessment guided by Dr. James Austin. Dr. Austin is a nationally renowned corrections expert who has worked as a consultant with the Maryland Department of Public Safety and Correctional Services (DPSCS) to help develop risk assessment instruments for parole, probation, corrections, and pre-trial services. Additionally, the Phase 1 review included an update from Phillip Pie, Deputy Secretary for Programs and Services at DPSCS. Mr. Pie provided an overview on the risk assessment instruments being utilized by DPSCS at the various stages of corrections. Finally, the Sentencing Guidelines Subcommittee completed its Phase 1 review with a staff presentation on the instruments being utilized at sentencing in Virginia and Missouri.

In addition to the Phase 1 activities outlined above, Judge Philip Caroom, Anne Arundel County Circuit Court, and Chair of the AHCS attended a MSCCSP meeting to offer his support for the use of risk assessment at sentencing. Judge Caroom noted that the AHCS is working to review the most effective methods to screen, evaluate, and sentence offenders. Judge Caroom discussed the potential development of a risk assessment instrument for low risk offenders in Maryland, and he further noted that given the success of risk assessment instruments in other states, it seems plausible that a Maryland risk assessment instrument may have the ability to significantly reduce the prison population and cost to taxpayers. Additionally, Judge Caroom noted that risk/needs assessment may allow for the implementation of more substantive treatment programs within the current correctional system and that he thought the goal of risk assessment was to provide judges with additional information that could be helpful at the time of sentencing. Judge Caroom indicated the AHCS has made a preliminary recommendation that the MSCCSP should explore the possibility of incorporating risk assessment into the current sentencing guidelines process.

After concluding the Phase 1 review and hearing the support of the AHCS, the MSCCSP agreed to proceed to the next phase with a focus on studying risk assessment to determine whether otherwise incarceration bound non-violent offenders could be diverted to community based alternatives without jeopardizing public safety. It was noted that this step is not a definitive commitment that Maryland will start including formal risk assessment in the sentencing guidelines process. However, the MSCCSP believes that there is enough work being done in the risk assessment field by other agencies in Maryland, as well as in other states, that it makes sense for the Commission to take the next step by looking at how risk assessment might be incorporated to augment the sentencing decision. The MSCCSP unanimously approved the recommendation to move to the next phase of risk assessment review and to seek funding to begin research on developing or adopting an existing risk assessment instrument to be utilized at sentencing as a complement to the existing sentencing guidelines.

Sentencing/Correctional Simulation Model

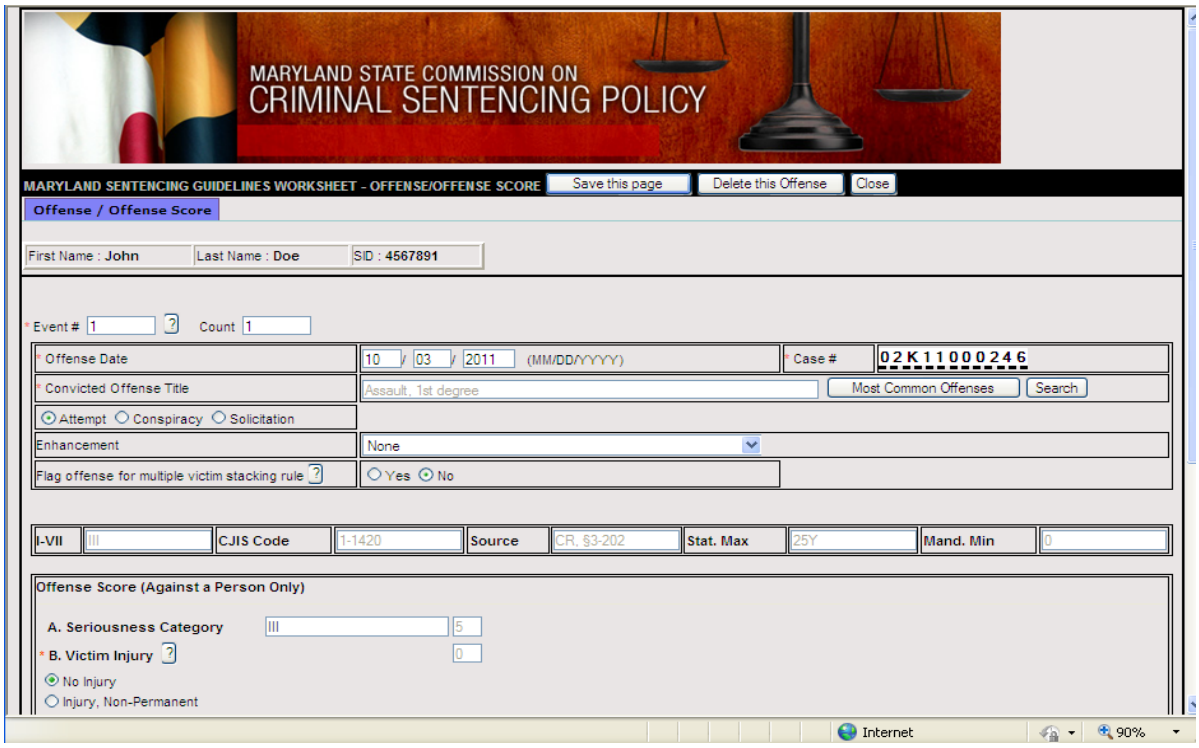
In the past year, the MSCCSP continued to work closely with Applied Research Services, Inc. (ARS) to finalize development of a computer simulation tool that mimics sentencing and correctional populations using different sentencing policies and laws, time-served practices, and sentence options/alternatives. The model relies on discrete-event simulation technology that allows Commission staff to manipulate sentencing records based on guideline revisions and to assess the impact changes will have on guideline recommendations, as well as future prison

populations. The MSCCSP will use the simulation model to assess the impact that proposed guideline revisions may have on correctional resources. The MSCCSP continues to work with ARS and staff at the DPSCS to conduct tests to verify the accuracy of the population projection component that relies on the Department of Corrections (DOC) data. The MSCCSP and DPSCS have agreed to establish an inter-agency committee to develop a protocol for utilizing the simulation model. Judge Leasure appointed Dr. Wellford as the MSCCSP representative to the simulation model committee, and the DPSCS has appointed three representatives from their agency. The simulation model committee will work in 2012 to lay a framework for how the new model can best assist in determining the correctional resources that will be necessary for any proposed changes to the sentencing guidelines.

Maryland Automated Guidelines System (MAGS)

The goal of the Maryland Automated Guidelines System (MAGS) is to fully automate sentencing guidelines calculation in a web-enabled application that will allow criminal justice practitioners to complete and submit sentencing guidelines worksheets electronically. MAGS will be hosted on web servers maintained by the Department of Public Safety & Correctional Services (DPSCS). DPSCS will provide secure access to MAGS and host the webpage in a demilitarized zone (DMZ) with secure socket layer (SSL) for communication to the site. The backend database will be located behind the firewall.

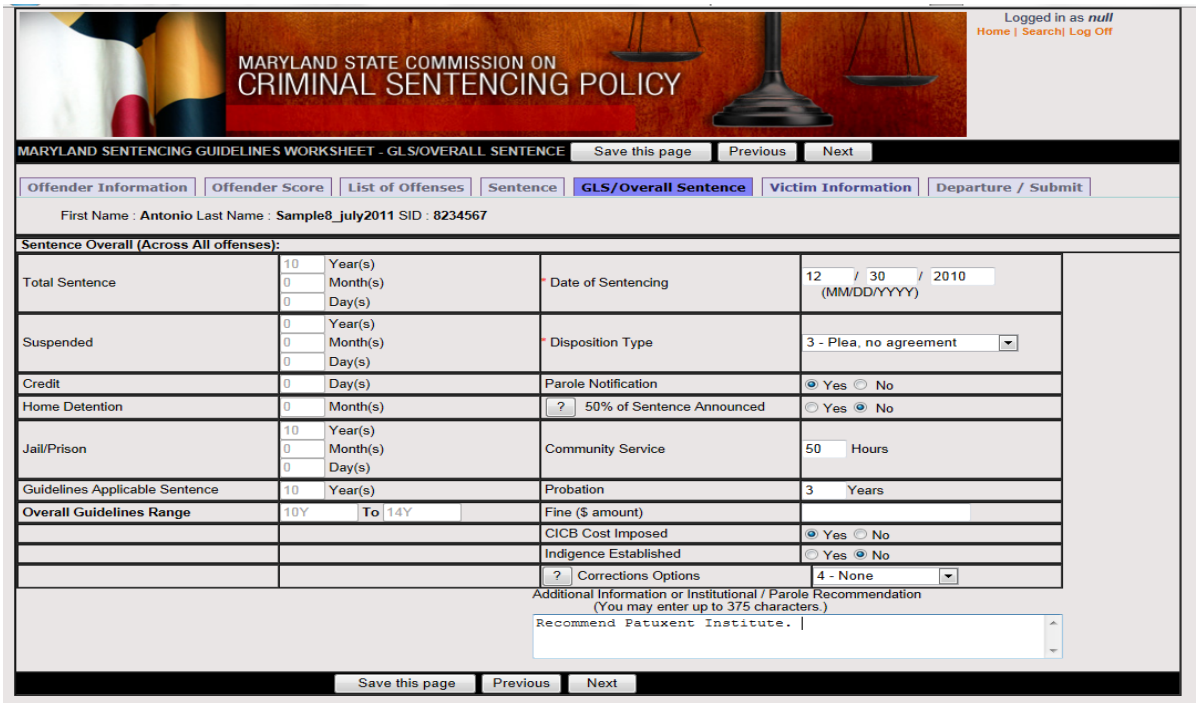
Image 3: Maryland Automated Guidelines System – Offense/Offense Score.



To access MAGS, users will follow a link on the MSCCSP website which will direct them to a secure website on a DPSCS server. The web-enabled system will calculate guidelines scores automatically and present the appropriate sentencing guidelines range for each case after a designated user enters the necessary convicted offense and prior record information. Image 3 displays a sample screenshot from the Offense/Offense Score screen which will allow the user to enter the convicted offense information, calculate an offense score, and calculate the guidelines range for the individual offense.

Additionally, MAGS will allow users to run multiple sentencing scenarios, enabling them to determine the appropriate guidelines range under varying sentencing conditions. Users will be able to print a hard copy of the computed guidelines worksheet 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 will be responsible for entering all appropriate sentencing information into MAGS (see Image 4 for a sample screenshot from the GLS/Overall Sentence screen). The judge or his/her designee will then electronically submit the completed guidelines worksheet to the MSCCSP sentencing guidelines database. It is expected that automation of the Maryland sentencing guidelines worksheet calculation and submission process will offer a substantial technological improvement to the criminal justice community by providing a more efficient web-enabled application that will result in more timely and accurate assessment of sentencing policy in the state of Maryland.

Image 4: Maryland Automated Guidelines System – GLS/Overall Sentence.



In 2011, the MSCCSP completed several critical steps in moving towards implementation of an automated web-based sentencing guidelines system. The first step was to identify a jurisdiction to complete a test-run of the MAGS application. The MSCCSP worked with the Administrative Office of the Courts (AOC) to recruit a volunteer circuit court to serve as a pilot site for the automated system. In July 2011, the Montgomery County Circuit Court agreed to serve as the pilot jurisdiction for MAGS. In August 2011, the MSCCSP staff completed a demonstration of the MAGS application to representatives from Montgomery County. The demonstration provided an opportunity for personnel from the Circuit Court, State's Attorney's Office, Public Defender's Office, and the Parole and Probation regional office to get acclimated with MAGS and provide feedback for moving towards implementation of the automated system.

The second major step completed in 2011 was the development of a user access plan for the application. After consultation with the Information Technology and Communications Division (ITCD) of DPSCS and David Seeman, Chief of Technical Services for the Montgomery County Court Administration, the MSCCSP developed a plan for secure access to the MAGS application whereby each user would authenticate access through the active directory of their own individual agency. This process would work the same as it does for access to the State Criminal Justice Dashboard. At initial login, the user would enter his/her user login and password. MAGS would then be directed to the active directory of the individual agency. The individual agency would then authenticate the individual person based on their set authentication levels and send back a YES or NO decision with respect to access to MAGS. The advantage of this proposed system is that court personnel would not need to learn a new username or password unique to MAGS, and they would simply contact their county's information technology (IT) staff for maintenance of passwords.

In the past year, the MSCCSP also completed a proposed security matrix for the MAGS application which details various proposed user groups and differing permission levels. Depending on the user group affiliation, users will be afforded different permission levels such as the ability to create a case, edit a case, and submit a completed case to the MSCCSP database. However, all user groups will be able to access the Guidelines Calculator Tool, which will be a stand-alone tool with a separate URL to be dedicated to calculating the sentencing guidelines. No login will be required to access the tool. Users will simply enter offender score, offense score, and convicted offense information, and the tool will calculate the appropriate guidelines. No information entered into the tool will be saved or stored, but users will be able to print a copy of the sample worksheet with the calculated sentencing guidelines.

The final step was to seek formal approval of the MAGS pilot from the Maryland Court of Appeals. In order to obtain this approval, the MSCCSP provided a demonstration on the MAGS application and explained the proposed user access plan to both the Judiciary Technology Oversight Board and the Conference of Circuit Judges. The Judiciary Technology Oversight Board unanimously approved their support of the MAGS application in December 2011, and the MSCCSP obtained the approval of the Conference of Circuit Judges in January 2012.

The MSCCSP expects to begin the MAGS pilot project on March 1, 2012. At this point, the MSCCSP will ask the Montgomery County Circuit Court to start utilizing MAGS for the completion and submission of all sentencing guidelines worksheets for an expected pilot period of six months. The MSCCSP staff proposed a six month pilot period in order to provide enough time to assess the ability of MAGS to efficiently process the sentencing guidelines worksheets. Furthermore, the MSCCSP is currently developing a training video for all anticipated users of the MAGS system. The training video will be available for download and viewing on the MSCCSP website and will allow users to learn how to use MAGS on their own training schedule. The MSCCSP staff will work closely with the IT staff of the Montgomery County courts, as well as the programmers at DPSCS to quickly address any technology issues that may arise during the pilot. At the conclusion of the pilot project, the MSCCSP will meet to assess the efficiency of MAGS and to make a recommendation regarding the need for additional pilot sites or the statewide deployment of the new automated model.

Public Comments Hearing

The MSCCSP held its annual public comments hearing at the House Office Building in Annapolis on December 13, 2011. The annual public comments hearing provides an opportunity for any interested person to address the Commission and discuss sentencing related issues. The MSCCSP sent an invitation to various key stakeholders throughout the state and announced the meeting via the Commission's website, the Maryland Register, the Maryland General Assembly's hearing schedule, and a press release by the DPSCS. Five individuals testified during the 2011 public comments hearing, speaking about a range of topics including parole for individuals serving life sentences; the work being done by the *Extra Legalese Group* to curb youth and gang violence; the *Second Chance Act* signed into law by President Bush; the impact of the felony murder rule; the over-reliance on incarceration; racial disparities in prison populations; and the need to give ex-offenders a fair chance to return to society. A copy of the written testimony provided by the speakers at the hearing is included in Appendix F.

SENTENCES REPORTED IN FY 2011

Maryland's voluntary sentencing guidelines apply to criminal cases prosecuted in circuit court, with the exception of the following sentencing matters: 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 CR, §2-303; and violations of public laws and municipal ordinances. 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 Administrative Office of the Courts (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 2011, the MSCCSP received 11,013 worksheets. Table 4 provides a breakdown of the number and percentage of worksheets received in fiscal year 2011 by circuit. The jurisdictions in each circuit are shown in Figure 1. The largest number of guidelines worksheets (3,346) was received from the Eighth Circuit (Baltimore City), while the smallest number (475) was received from the Second Circuit (Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties).

Table 4. Number and Percentage of Worksheets Submitted by Circuit, Fiscal Year 2011

Circuit	Number of Worksheets Submitted	Percent of Total Worksheets Submitted[a]
1	802	7.3%
2	475	4.3%
3	1,706	15.5%
4	620	5.6%
5	1,385	12.6%
6	756	6.9%
7	1,923	17.5%
8	3,346	30.4%
TOTAL	11,013	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

Case Characteristics

Figures 2 through 4 summarize the descriptive characteristics from the 11,013 worksheets submitted for offenders sentenced in fiscal year 2011. Most were male (88.5%) and African-American (66.2%). The median age of offenders at date of sentencing was 27.9 years. The youngest offender was 14, while the oldest was 83 years of age. Approximately 19% of offenders were under 21 years of age; 41% were 21-30 years old; 20% were 31-40 years old; and the remaining 20% were 41 years or older.

Figure 2. Distribution of Cases by Gender of Offender, Fiscal Year 2011

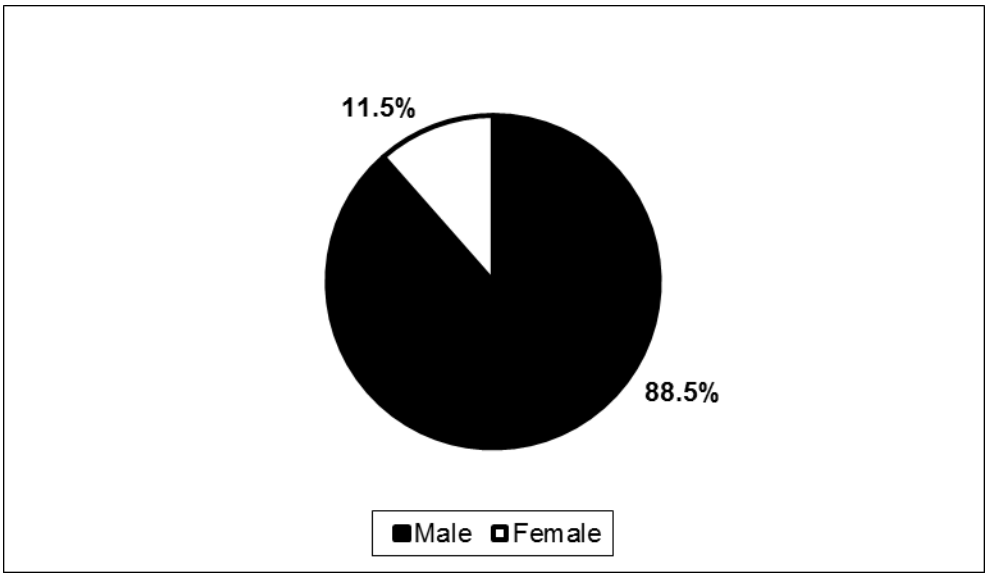


Figure 3. Distribution of Cases by Race of Offender, Fiscal Year 2011

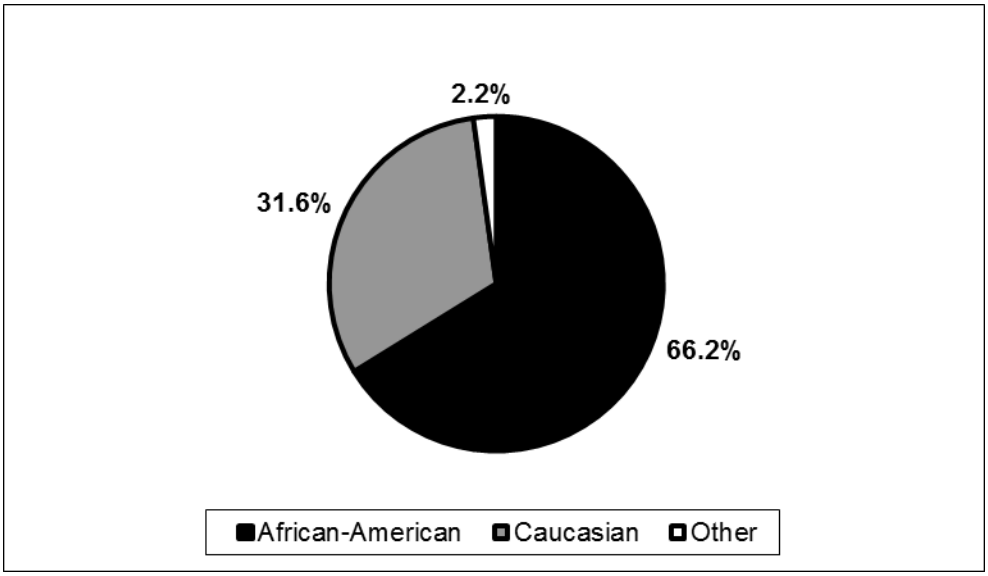
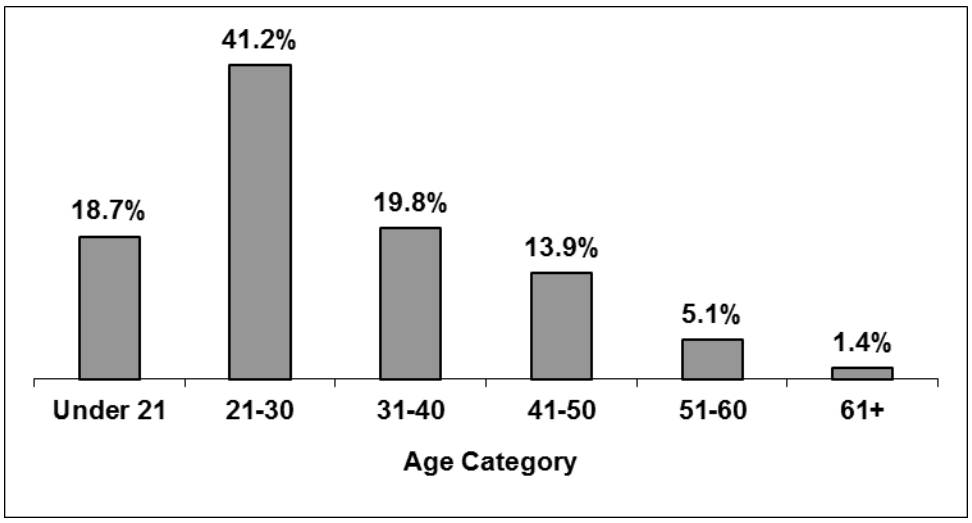


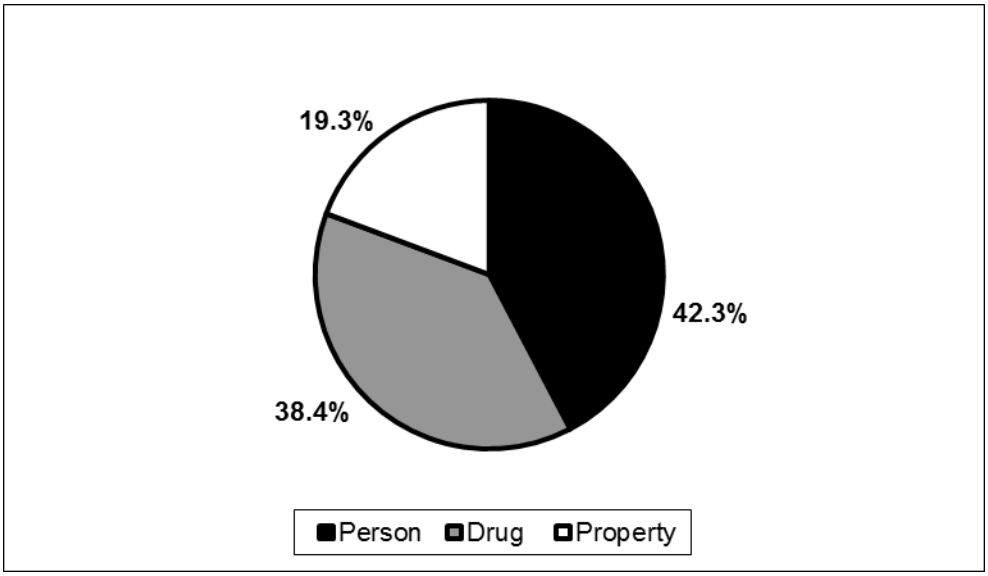
Figure 4. Distribution of Cases by Age of Offender, Fiscal Year 2011



Figures 5 through 9 show the distribution of cases by crime category, seriousness category, disposition type, sentence type, and imposition of corrections options. Note that the total number of cases on which the figures are based excludes reconsideration, review, and probation revocation cases (N=35).[1] 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 (38.4%). In 19.3% 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 (45.6% person, 35.9% drug, 18.5% property).[2]

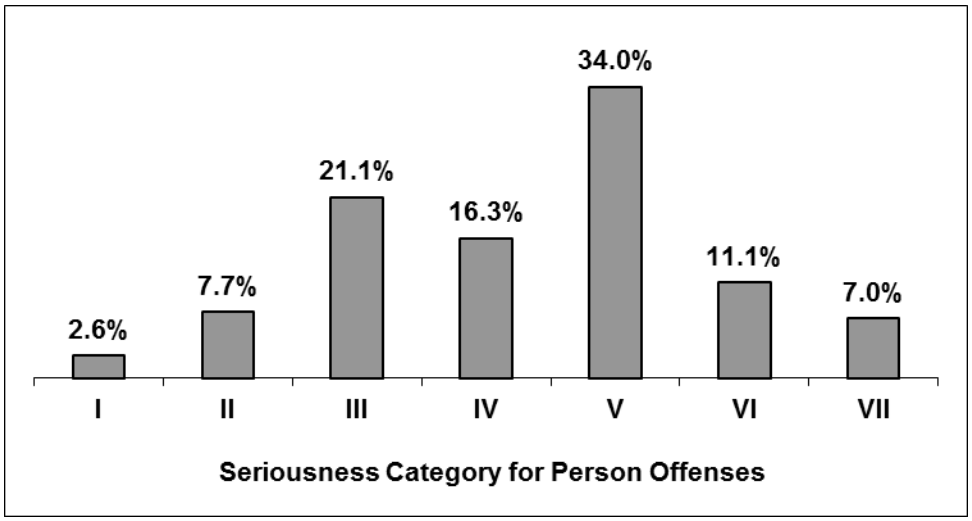
[1] Effective September 1, 2009, the MSCCSP determined that a Maryland Sentencing Guidelines Worksheet does not need to be completed for probation revocations.
[2] Incarceration includes home detention and credited time, as well as post-sentence jail/prison time.

Figure 5. Distribution of Cases by Crime Category, Fiscal Year 2011



Figures 6a, 6b, and 6c display the distribution of cases by offense seriousness category for each of the three crime categories. Seriousness category is an offense rating ranging from I to VII, where I designates the most serious criminal offenses and VII designates the least serious criminal offenses. Figure 6a below illustrates that in cases involving an offense against a person, offenses with a seriousness category V were most common, followed by offenses with a seriousness category III. *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 2011



The distribution of drug offenses by seriousness category is summarized in Figure 6b. More than 80% of drug cases involved an offense with either a seriousness category IIIB (56.5%) or a seriousness category IV (25.1%). *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 2011

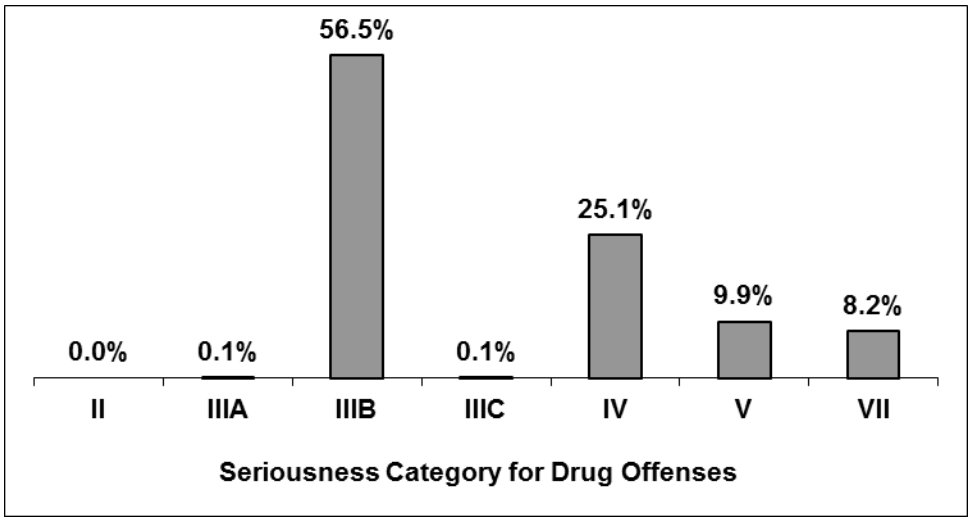


Figure 6c provides the distribution of offenses by seriousness category for property cases. Offenses with a seriousness category II or VI were far less frequent than offenses in the remaining seriousness categories. The most common property offenses included *first degree burglary* (III), *second degree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

Figure 6c. Distribution of Property Offenses by Seriousness Category, Fiscal Year 2011

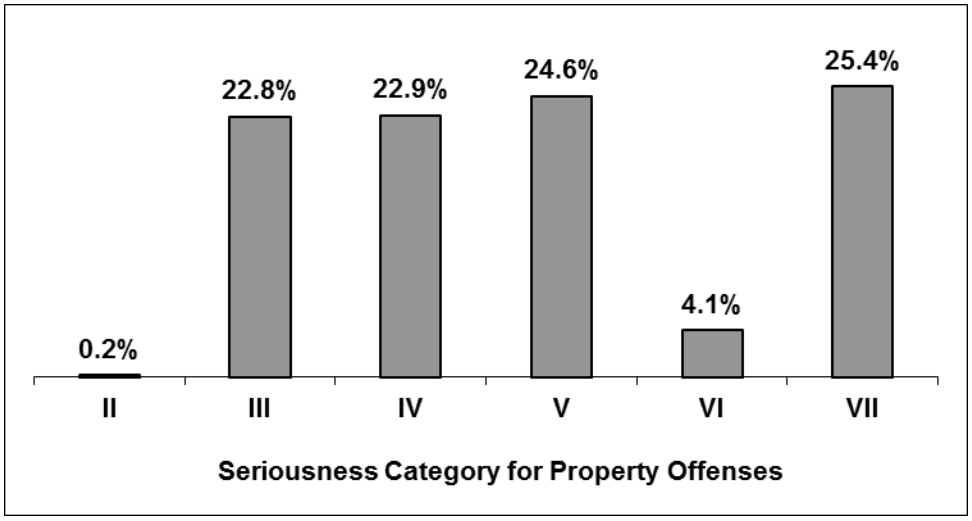
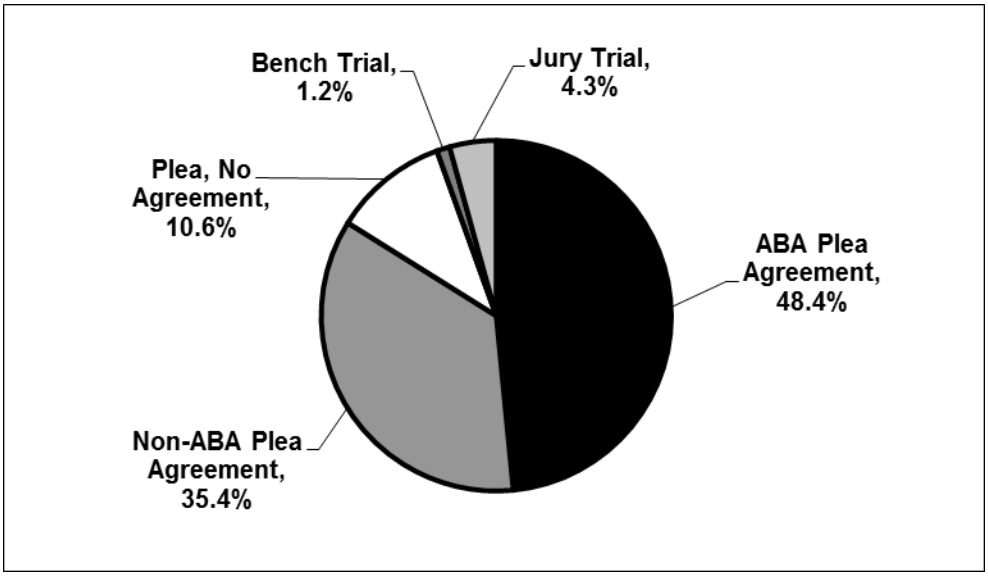


Figure 7 shows the distribution of cases by disposition type (Appendix D contains a description of the disposition types listed on the sentencing guidelines worksheet). The vast majority of cases were resolved by either an ABA plea agreement (48.4%) or a non-ABA plea agreement (35.4%). An additional 10.6% were resolved by a plea with no agreement, and 5.5% of cases were resolved by either a bench or jury trial (1.2% and 4.3%, respectively).

Figure 7. Distribution of Cases by Disposition, Fiscal Year 2011



The distribution of cases by sentence type is displayed in Figure 8. More than half of all cases resulted in a sentence to both incarceration and probation. Approximately one-quarter of offenders were sentenced to incarceration only. Similarly, 21.3% were sentenced to probation only. Few defendants (<1%) received a sentence that did not include either incarceration or probation.

Figure 8. Distribution of Cases by Sentence Type, Fiscal Year 2011

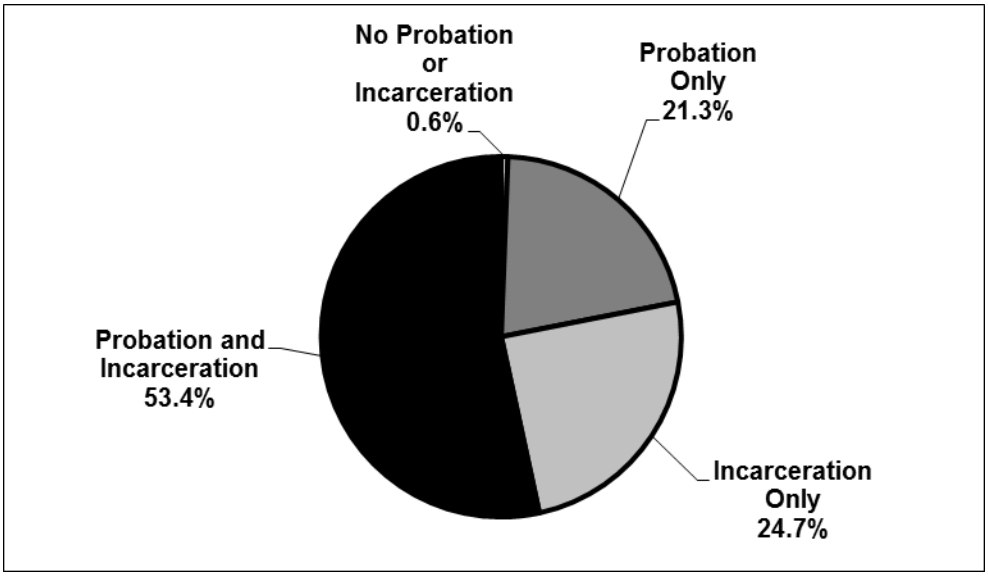


Figure 9 summarizes the percentage of sentences that included corrections options. Correctional options are defined in COMAR 14.22.01.02 (and on page 2 of the Maryland Sentencing Guidelines Manual) as:

- home detention;
- a corrections options program 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 (HG), Title 8, Subtitle 5, Annotated Code of Maryland; or
- participation in a drug court or HIDTA substance abuse treatment program.

Further, correctional 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 (FDI) in Baltimore City which provides inpatient drug treatment meets the Commission's criteria of a corrections options program.

Figure 9. Distribution of Cases by Corrections Options, Fiscal Year 2011

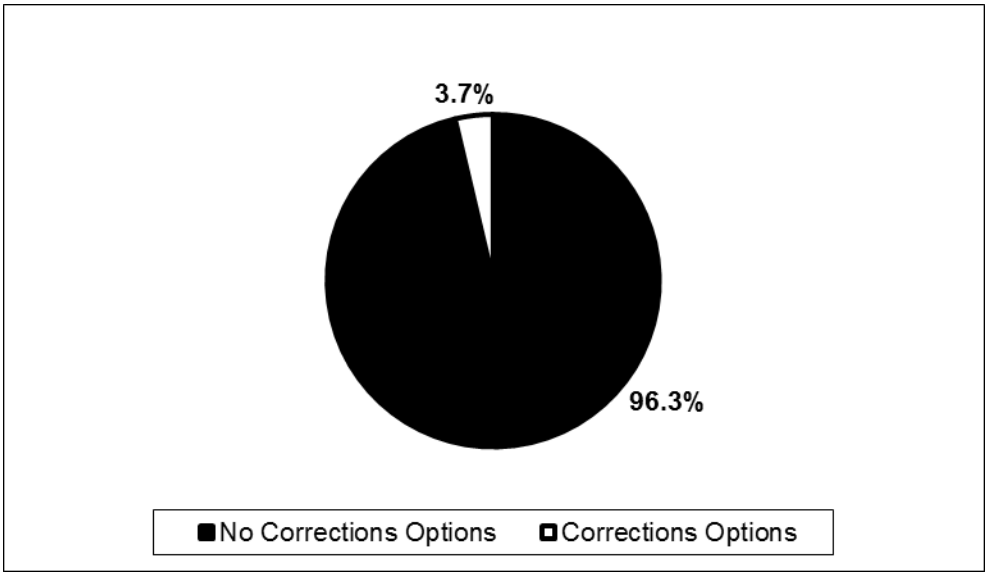


Figure 9 illustrates that 3.7% of offenders were sentenced to a corrections options program in fiscal year 2011. It is important to note that the field for recording corrections options on the sentencing guidelines worksheet is often left blank. For example, the corrections options section of the worksheet was blank on more than 90% of the worksheets submitted to the MSCCSP for offenders sentenced in fiscal year 2011. 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 9 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 defendant is sentenced in circuit court. The following provides a detailed examination of judicial compliance with Maryland's voluntary sentencing guidelines.

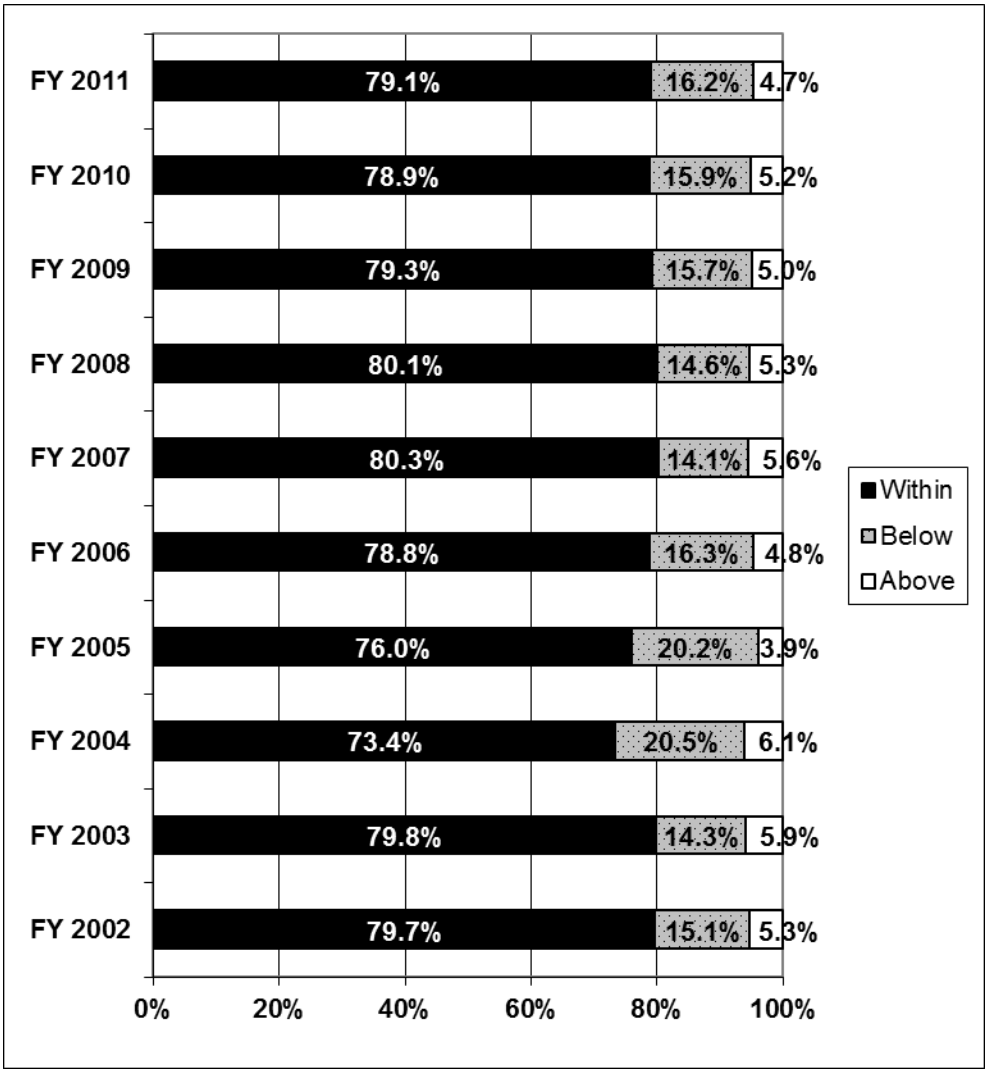
Judicial Compliance Rates Overall

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 a defendant 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 American Bar Association (ABA) plea agreement are considered compliant (COMAR 14.22.01.17), as they represent an accurate reflection of the consensus of the parties and the court within the specific community they represent. Similarly, sentences to correctional options programs (e.g., drug court; Health General, §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, sexual child abuse, or escape.

Figure 10 contains a breakdown of the overall guidelines compliance rates for the past ten fiscal years (2002-2011). Fiscal year 2002 was selected as the initial year for this trend analysis because the changes to the definition of a compliant sentence noted above became effective at the start of fiscal year 2002. The figure indicates that in all ten years, the overall rate of compliance exceeded the Commission's goal of 65% compliance.[3] 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.

[3] 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 10. Overall Sentencing Guidelines Compliance by Fiscal Year (All Cases)

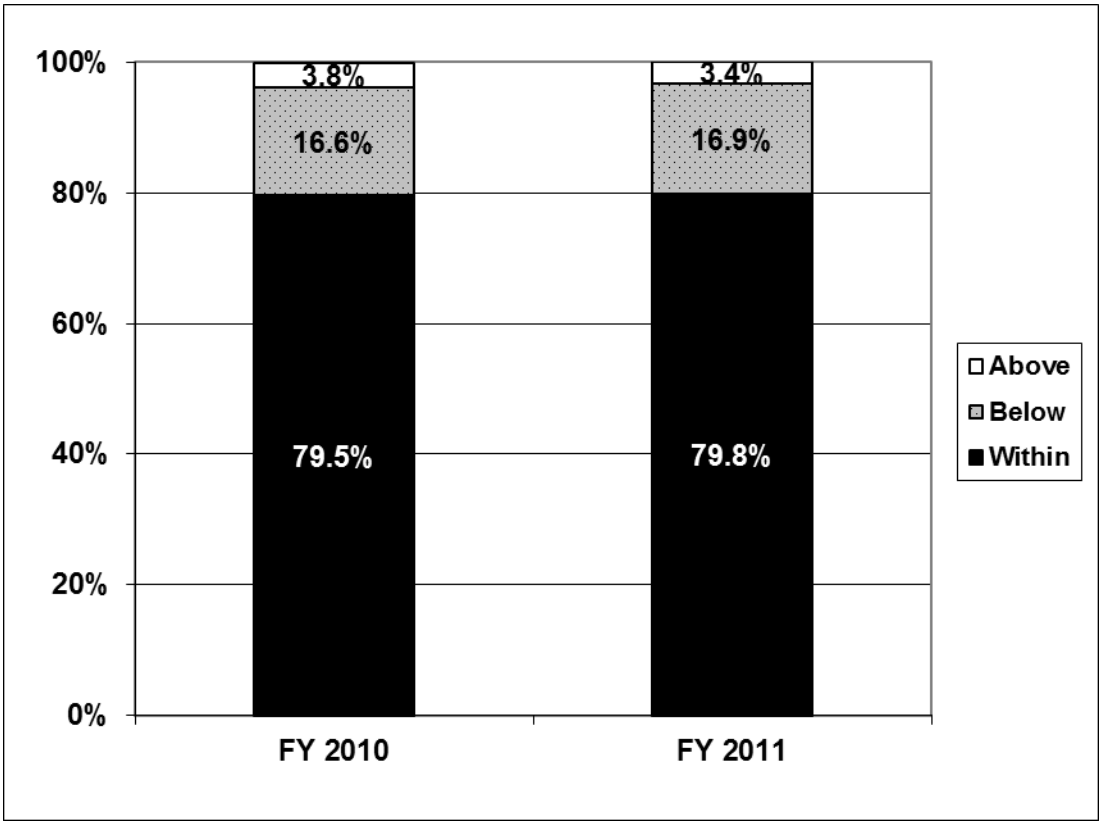


Analyses of judicial compliance in Maryland have traditionally focused on sentences for single count convictions because they permit the most direct comparison of compliance by crime category and by offense type, within the applicable cell of the sentencing matrix. Since multiple count convictions can 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 2010 and 2011. Of the 11,013 sentencing guidelines worksheets submitted to the MSCCSP in 2011, 8,559 (78%) contained single count convictions.

Figure 11 provides a breakdown of the overall guidelines compliance rates for fiscal years 2010 and 2011 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.

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

Figure 11. Overall Sentencing Guidelines Compliance by Fiscal Year (Single Count Convictions)

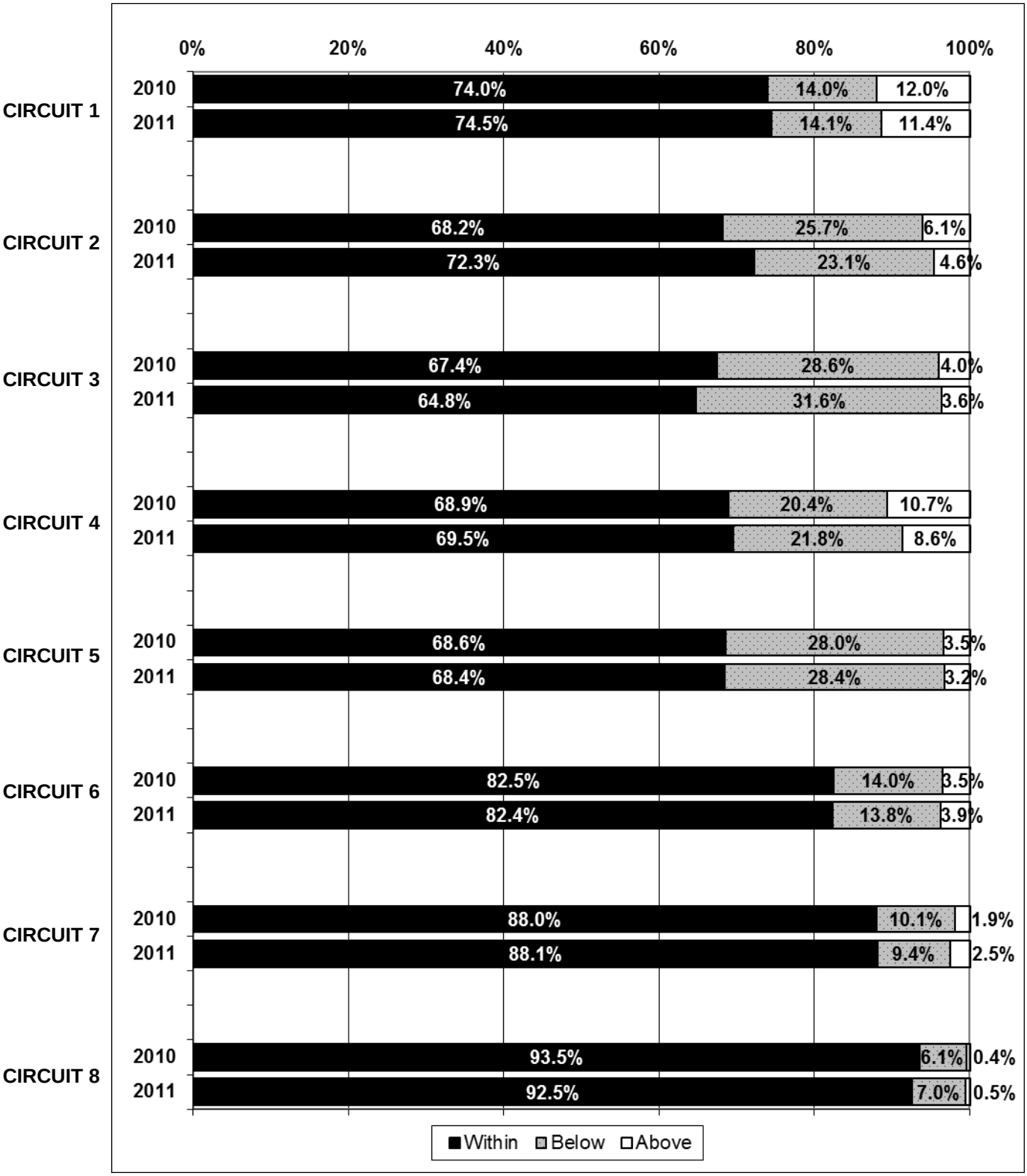


Judicial Compliance Rates by Circuit

As shown in Figure 12, all eight circuits met the 65% compliance benchmark in fiscal year 2011.[4] The circuit with the largest number of defendants, the Eighth Circuit, had the highest compliance rate (92.5%). Compliance was lowest in the Third Circuit (64.8%). The largest change in compliance rates occurred in the Second Circuit, where rates increased 4.1% from 68.2% in 2010 to 72.3% in 2011.

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

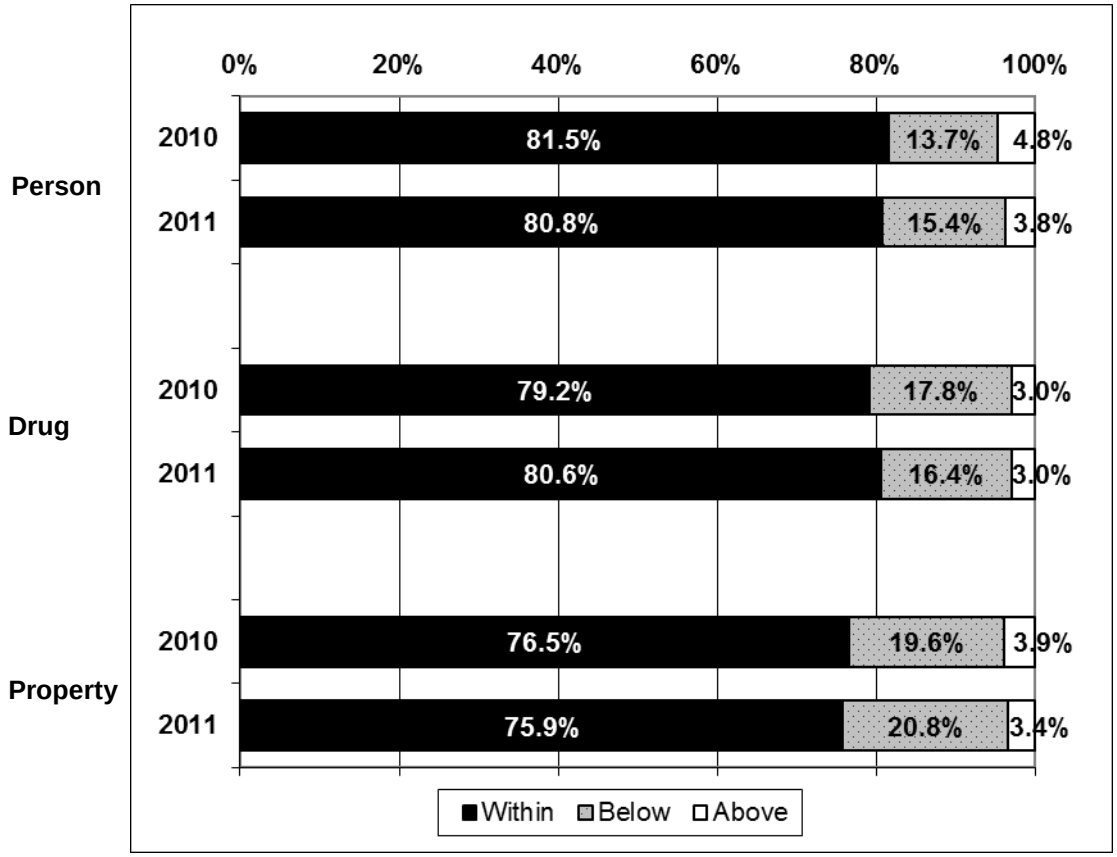
Figure 12. Sentencing Guidelines Compliance by Circuit and Fiscal Year



Judicial Compliance Rates by Crime Category

Figure 13 shows judicial compliance by crime category for fiscal years 2010 and 2011. Person offenses were the least likely to result in a departure from the guidelines in fiscal year 2011, 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 2010 to 2011, and the 65% benchmark was met for all three crime categories in both fiscal years.[5]

Figure 13. Sentencing Guidelines Compliance by Crime Category and Fiscal Year

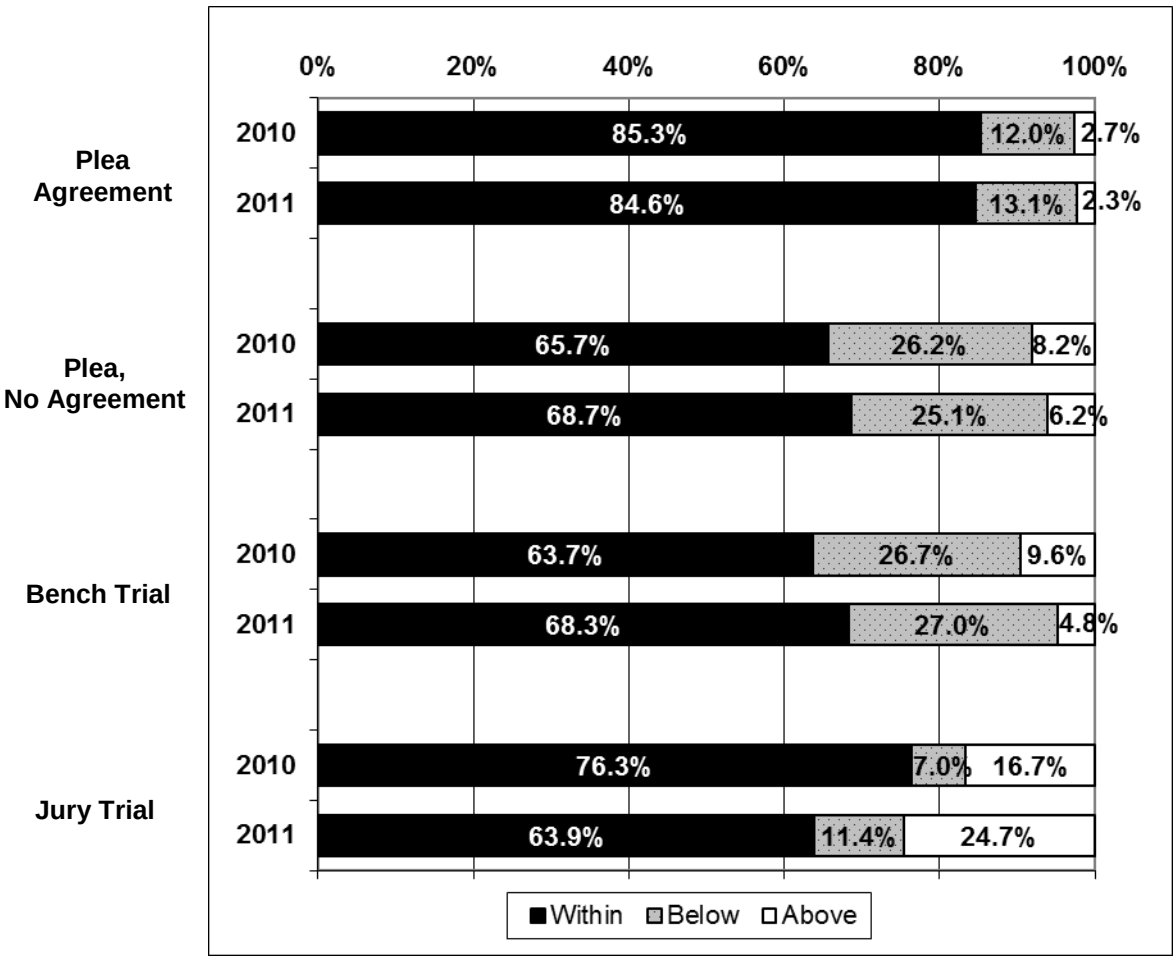


[5] See Appendix C for sentencing guidelines compliance and average sentence for the five most common offenses in each crime category.

Judicial Compliance Rates by Type of Disposition

Figure 14 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 (84.6%) in fiscal year 2011. This is not surprising given that the plea agreement category includes ABA pleas, which are defined as compliant. In contrast, cases resolved by a jury trial fell just short of the 65% compliance benchmark, dropping from 76.3% in 2010 to 63.9% in 2011. Compliance rates rose slightly over the past two fiscal years for cases adjudicated by a plea with no agreement as well as those adjudicated by bench trial. When departures occurred, they were more likely to be below the recommended guidelines for cases resolved by a plea agreement, plea with no agreement, or bench trial. In contrast, departures were more likely to be above the recommended guidelines for cases resolved by a jury trial.

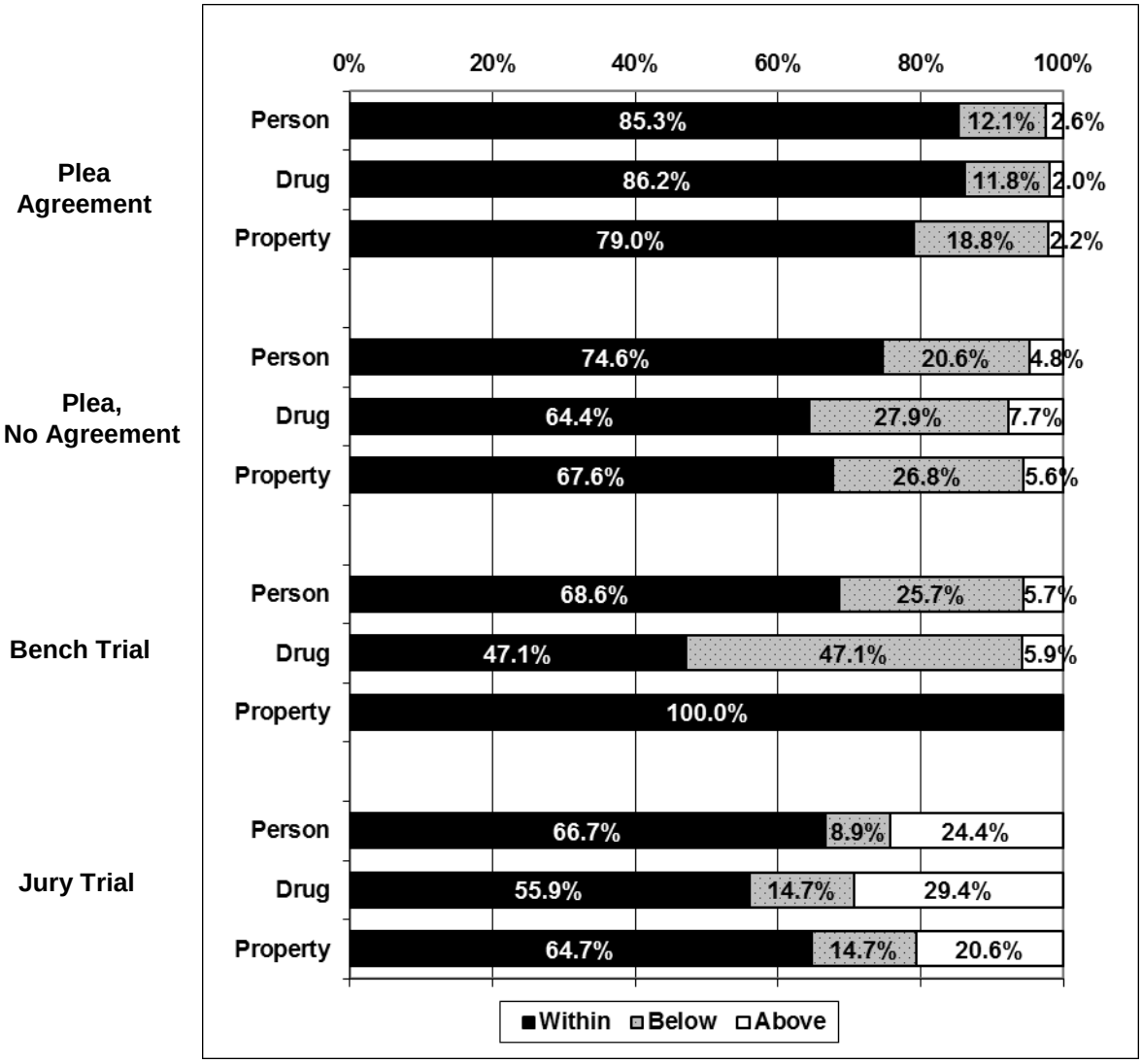
Figure 14. Sentencing Guidelines Compliance by Type of Disposition and Fiscal Year



Judicial Compliance Rates by Crime Category and Disposition

Compliance rates by crime category and disposition are displayed in Figure 15 for fiscal year 2011. 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 11 worksheets in fiscal year 2011 for single-count property offenses adjudicated by a bench trial.

Figure 15. Sentencing Guidelines Compliance by Crime Category and Disposition, 2011



The highest compliance rates were observed for property offenses adjudicated by a bench trial (100%) and drug and person offenses adjudicated by a plea agreement (86.2% and 85.3%, respectively). All but three compliance rates met the benchmark of 65%: drug offenses resolved by a plea with no agreement (64.4%), drug offenses resolved by a jury trial (55.9%), and drug offenses resolved by a bench trial (47.1%). Upward departures were most common among

drug offenses disposed of by a jury trial (29.4%), while downward departures occurred most often among drug offenses disposed of by a bench trial (47.1%).

Departure Reasons

COMAR regulation 14.22.01.05(A) directs the sentencing judge to document the reason or reasons for imposing a sentence outside of the recommended guidelines range on the guidelines worksheet. 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 2011, the reason for departure was provided in 50.8% of all departure cases. While this represents a moderate increase in reporting from fiscal year 2010 (44.9%) and fiscal year 2009 (42.7%), the MSCCSP will need to continue to work with circuit court judges to increase this reporting rate. Increased reporting would allow the MSCCSP to effectively analyze the reasons for departure and to look for patterns in particular types of cases that might suggest further review is warranted.

Tables 5 and 6 display the reasons given for departures from the guidelines. The tables include all of the reasons listed on the reference card as well as the most commonly cited "other" reasons. Table 5 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 51.4% of downward departures, the reason(s) 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 5. Departure Reasons for Cases Below the Guidelines, Fiscal Year 2011[a]

Mitigating Reasons	Percent of Departures Where Reason is Cited	Valid Percent[b]
No Departure Reason Given	51.4%	---
The parties reached a plea agreement that called for a reduced sentence	21.6%	44.6%
Recommendation of State's Attorney or Division of Parole and Probation	13.4%	27.5%
Offender's commitment to substance abuse treatment or other therapeutic program	5.5%	11.3%
Offender's minor role in the offense	5.2%	10.7%
Offender had diminished capability for judgment	2.7%	5.6%
Offender's age/health	2.7%	5.6%
Offender made restorative efforts after the offense	2.4%	5%
Offender's prior criminal record not significant	1.7%	3.6%
Victim's participation in the offense lessens the offender's culpability	1.6%	3.3%
Weak facts of the case	0.7%	1.4%
Offender was influenced by coercion or duress	0.6%	1.3%
Other reason (not specified above)	7.8%	16%

[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 6 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 38.1% of upward departures, the reason(s) 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) offender's major role in the offense; and 3) the vicious or heinous nature of the conduct.

Table 6. Departure Reasons for Cases Above the Guidelines, Fiscal Year 2011[a]

Aggravating Reasons	Percent of Departures Where Reason is Cited	Valid Percent[b]
No Departure Reason Given	38.1%	---
Recommendation of State's Attorney or Division of Parole and Probation	28.4%	45.8%
Offender's major role in the offense	10.4%	16.8%
The vicious or heinous nature of the conduct	9.3%	15.1%
Offender's significant participation in major controlled substance offense	8.7%	14%
The level of harm was excessive	6.9%	11.2%
Special circumstances of the victim	6.6%	10.6%
Offender exploited a position of trust	6.2%	10.1%
Offender's prior criminal record significant	5.5%	8.9%
Plea agreement	2%	3.4%
Offender committed a "white collar" offense	1%	1.7%
Other reason (not specified above)	11.8%	19%

[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, adopted 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, adopted effective March 28, 2005.[6] The available data on reconsidered sentences and economic loss for cases sentenced in fiscal year 2011 are summarized below.

Report on Adjustments from Reconsidered Sentences Involving Crimes of Violence

Table 7 reports the submissions of reconsidered sentences reported to the MSCCSP for crimes of violence (COV) as defined in §14-101 of the Criminal Law Article, Annotated Code of Maryland for fiscal year 2011 by circuit. The number of sentence reconsiderations for COV offenses reported to the MSCCSP for fiscal years 2010 and 2011 were provided in advance of this report to the Administrative Office of the Courts. The advance notice was provided so that the courts would have the opportunity to address any discrepancies regarding the number of reported cases. Table 7 is based on reconsidered sentences for twelve offenders and twenty-two offenses. This represents a slight decrease from fiscal year 2010 when the MSCCSP received worksheets on reconsiderations for crimes of violence for fourteen offenders and thirty-

[6] 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)).

five offenses. Robbery with a dangerous weapon [CR, §3-403] was the most common violent offense in reconsidered cases reported to the MSCCSP in fiscal year 2011.

Table 7. Case Reconsiderations for Crimes of Violence (CR, §14-101), Fiscal Year 2011[a]

Circuit	Offense	# of Cases
FIRST	Assault, 1st Degree	1
	Continuing Course of Conduct with Victim Under 14	1
	Robbery	1
SIXTH	Sex Offense, 1st Degree	1
SEVENTH	Arson, 1st Degree	2
	Assault, 1st Degree	1
	Handgun Use in Felony or Crime of Violence	4
	Murder, 1st Degree	3
	Murder, 1st Degree, Attempted	2
	Murder, 2nd Degree	1
	Robbery with Dangerous Weapon	5

[a] Table 7 is based on reconsidered sentences for 12 offenders and 22 offenses.

Economic Loss in Title 7 and Title 8 Crimes

In fiscal year 2011, 1,324 sentences for theft, fraud, and related crimes were reported to the MSCCSP. The amount of economic loss to the victim was recorded for 443 (33.5%) of these cases. When reported, economic loss ranged in value from a minimum of no loss to a maximum of $1,274,077. The average amount of loss was $18,540. The majority of cases in which the amount of economic loss was reported on the sentencing guidelines worksheet involved a conviction for either misdemeanor theft or theft scheme, less than $1,000; felony theft or theft scheme, at least $1,000 but less than $10,000; or felony theft or theft scheme, $500 or greater (CR, §7-104).

MSCCSP PLANNED ACTIVITIES FOR 2012

The work of the MSCCSP in 2012 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 2012.

In 2012, 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 explore possible funding opportunities to further study the potential for adopting a risk assessment instrument to be utilized at sentencing. Furthermore, the MSCCSP will conduct a six month pilot program for the Maryland Automated Guidelines System and make an assessment for additional pilot sites or statewide implementation of the automated system.

The simulation model committee will work together in 2012 to lay a framework for how the new model can best assist in determining the correctional resources that will be necessary for any proposed changes to the sentencing guidelines.

The Commission's Sentencing Guidelines Subcommittee will continue to perform routine duties such as reviewing all criminal offenses and changes in the criminal code passed by the General Assembly during the upcoming legislative session, classifying the seriousness categories for these offenses, and submitting amendments to the AELR Committee for adoption in the COMAR. The Sentencing Guidelines Subcommittee will continue to review the definition of single and multiple criminal events for the purpose of scoring the guidelines and will also review the collection of victim related data and announcement of time served on the sentencing guidelines worksheet.

The activities described above are just a few of the many steps that will be taken by the Commission in 2012 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 B:

Maryland Sentencing Guidelines Worksheet (version 1.6)

MARYLAND SENTENCING GUIDELINES WORKSHEET

OFFENDER NAME - Last, First, Middle | SID# | SEX __M __F | BIRTHDATE __/__/__ | JURISDICTION

PSI __Yes __No | DATE OF OFFENSE __/__/__ | DATE OF SENTENCING __/__/__ | DISPOSITION TYPE: __ABA plea agreement __Non-ABA plea agreement __Plea, no agreement __Court trial __Jury trial __Reconsideration __Review | REPRESENTATION: __Private __Public Defender __Court Appointed __Self | ETHNICITY: Hispanic/Latino Origin __Yes __No; INDIGENCE ESTABLISHED __Yes __No | RACE: __Black __White __Native Hawaiian/Pacific Islander __American Indian/Alaskan Native __Asian __Other __Unidentifiable

AT THIS SENTENCING, NUMBER OF: CONVICTED OFFENSES ____ CRIMINAL EVENTS ____ | WORKSHEET #____ OF ____ CRIMINAL EVENT #____.

CONVICTED OFFENSE TITLE	I-VII	CJIS CODE	MD CODE, ART, & SECTION	STAT. MAX	MAND. MIN	CASE #/DOCKET #
1st Convicted Offense						
2nd Convicted Offense						
3rd Convicted Offense						

OFFENSE SCORE(S) – Offense Against a Person Only

1st Off	2nd Off	3rd Off		A. Seriousness Category
1	1	1	=	V – VII
3	3	3	=	IV
5	5	5	=	III
8	8	8	=	II
10	10	10	=	I

1st Off	2nd Off	3rd Off		B. Victim Injury
0	0	0	=	No Injury
1	1	1	=	Injury, Non-Permanent
2	2	2	=	Permanent Injury or Death

1st Off	2nd Off	3rd Off		C. Weapon Presence
0	0	0	=	No Weapon
1	1	1	=	Weapon Other Than Firearm
2	2	2	=	Firearm or Explosive

1st Off	2nd Off	3rd Off		D. Special Victim Vulnerability
0	0	0	=	No
1	1	1	=	Yes

____ ____ ____ **OFFENSE SCORE(S)**

OFFENDER SCORE

A. Relationship to CJS When Instant Offense Occurred
0 = None or Pending Cases
1 = Court or Other Criminal Justice Supervision

B. Juvenile Delinquency
0 = 23 years or older **or** crime-free for 5 years **or** no more than 1 finding of a delinquent act
1 = Under 23 years old **and**: 2 or more findings of a delinquent act **or** 1 commitment
2 = Under 23 years **and** committed 2 or more times

C. Prior Adult Criminal Record
0 = None 3 = Moderate
1 = Minor 5 = Major

D. Prior Adult Parole/Prob Violation
0 = No 1 = Yes

____ **OFFENDER SCORE**

GUIDELINES RANGE	ACTUAL SENTENCE – Imposed, Suspended, Time Served, Probation, Restitution, Fine, Corrections Options Programs (Drug Treatment Court, Home Detention, Etc.)
1st Con. Off.	**1st Convicted Offense**
_____ TO _____	For Theft, Fraud, and Related Crimes, please indicate: $Economic loss $_____; $Unknown Amount Subsequent Offender Filed __Yes __No; Restitution Requested __Yes __No Subsequent Offender Proven __Yes __No; Restitution Proven __Yes __No
2nd Con. Off.	**2nd Convicted Offense**
_____ TO _____	For Theft, Fraud, and Related Crimes, please indicate: $Economic loss $_____; $Unknown Amount Subsequent Offender Filed __Yes __No; Restitution Requested __Yes __No Subsequent Offender Proven __Yes __No; Restitution Proven __Yes __No
3rd Con. Off.	**3rd Convicted Offense**
_____ TO _____	For Theft, Fraud, and Related Crimes, please indicate: $Economic loss $_____; $Unknown Amount Subsequent Offender Filed __Yes __No; Restitution Requested __Yes __No Subsequent Offender Proven __Yes __No; Restitution Proven __Yes __No
Overall Guidelines Range Multiple Counts Only	**Was the offender sentenced to a Corrections Options program under Commission criteria?** **Drug Court** __Yes __No **Other** __Yes __No
_____ TO _____	**Additional Information or Institutional/Parole Recommendation**
50% of Sentence Announced __Yes __No	**Parole Notification __Yes __No**

Worksheet Completed By

Title

Sentencing Judge (Please Print)

Sentencing Judge's Signature

VICTIM INFORMATION

	Yes	No
Victim	**__**	**__**
Victim Unavailable	**__**	**__**
NRF	__	__
Victim Notified Plea	__	__
Victim Notified Date	__	__
Victim Present	__	__
Written VIS	__	__
Oral VIS	__	__

No Contact with Victim	__Yes	__No
CICB Cost Imposed	__Yes	__No

SENTENCE DEPARTURE INFORMATION

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.

Departure Code 9 or 18 (Please Explain):

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

5/2010 (1.6)

Appendix C:

Sentencing Guidelines Compliance and Average Sentence by Offense Type, Fiscal Year 2011 (Most Common Person, Drug, and Property Offenses)

	N	Guidelines Compliance			% Incarc.	Average Sentence Among Incarcerated	
Person Offenses		**Within**	**Below**	**Above**		**Total Sentence**	**Total, Less Suspended**
Assault, 2nd Degree	929	85.6%	10.2%	4.2%	69.6%	5 years	1.2 years
Robbery	422	84.4%	12.6%	3.1%	89.8%	8.3 years	2.5 years
Assault, 1st Degree	267	69.7%	29.2%	1.1%	92.1%	12.6 years	4.4 years
Robbery with Dangerous Weapon	260	72.3%	25%	2.7%	95.8%	11.9 years	5 years
Failure to Register as Sex Offender	164	90.9%	9.1%	0%	95.1%	.7 years	.3 years
Drug Offenses							
Distribution Cocaine	988	78.6%	19.3%	2%	77.7%	7.7 years	2.7 years
Distribution Marijuana	772	86.4%	11.9%	1.7%	62.8%	3.1 years	.8 years
Distribution Heroin	662	85.8%	13.3%	.9%	78.4%	7.3 years	2.5 years
Possession Marijuana	275	85.4%	1.1%	13.5%	50.9%	.7 years	.2 years
Possession Cocaine	146	81.5%	14.4%	4.1%	69.9%	2.6 years	1 year
Property Offenses							
Burglary, 1st Degree	323	77.6%	21.1%	1.2%	83.3%	8.6 years	3.1 years
Burglary, 2nd Degree	213	72.8%	25.8%	1.4%	75.6%	7.2 years	2.7 years
Theft or Theft Scheme, At Least $1,000 but Less Than $10,000	180	74.4%	21.7%	3.9%	66.7%	5.3 years	1.7 years
Theft or Theft Scheme, Less Than $1,000	154	74%	21.4%	4.5%	61.7%	1.2 years	.6 years
Burglary, 4th Degree	143	80.3%	16.9%	2.8%	56.6%	2 years	.8 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 a jury decided the factual questions.
Reconsideration	Reconsideration of a previously imposed sentence for a crime of violence as defined in Criminal Law Article, §14-101, Annotated Code of Maryland.
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).

Appendix F:

Testimony Provided at the
2011 MSCCSP Public Comments Hearing

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SPEAKER NAME: Lea Green

TITLE: President, Maryland Cure

TESTIMONY PROVIDED:

MARYLAND STATE COMMISSION ON CRIMINAL SENTENCING POLICY
JUDICIARY COMMITTEE ROOM – ROOM 100
6 BLADEN STREET
ANNAPOLIS, MARYLAND 21401

Dear Honorable Diane O. Leasure
Commissioners

Re: SECOND CHANCE ACT, SIGNED BY FORMER PRESIDENT BUSH
APRIL 9, 2008

Please be advised there is a progressive "think tank" of ex-admitted gang members, coming together and LINKING ARMS for peace in Jessup, Maryland! This group is called EXTRA LEGALESE GROUP. They are committed to making a difference inside the walls and reaching to the outside communities to help with the violence.

As a mother of a Lifer with parole and a prison reform advocate, this only edify my belief that people can redeem and rehabilitate themselves. How encouraging it was to see different gang members coming together as ONE! LINKING ARMS, putting their difference aside and asking us on the outside to help them on the inside reach our youth, and make a difference in our communities!

I can think of no better partnership for our society, especially our youth than these positive incarcerate citizens, who have so much to share about negative thinking, been there done that! Many have turned their life around!

The Second Chance Act, passed by the highest Court in the land, would help build a positive dialogue towards helping us heal from MARYLAND, 16 years of fail policies.

Please consider supporting the SECOND CHANCE ACT and have MARYLAND on record for doing the right thing.

THIS EXTRA LEGALESE GROUP (ELG) was given the HONOR RECEIVING THE DAILY RECORD'S, 2011 INNOVATION OF THE YEAR.

These "incarcerated citizens" have truly proved that they deserve a SECOND CHANCE!

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SPEAKER NAME: Edward Sabin, Ph.D.

TITLE: Alternatives to Violence Project (AVP)

TESTIMONY PROVIDED:

Maryland State Commission on Criminal Sentencing Policy
2011 Annual Public Comments Hearing, December 13, 2011
Testimony by Edward Sabin

Two years ago I saw a PBS Frontline program, *When Kids Get Life*, which had a large impact on me. It tells the stories of five juveniles serving life sentences in the U.S. at least one or two of whom were convicted of felony murder. Prior to this I had never heard of this charge. I assumed that first degree homicide generally meant premeditated murder where the prosecution had to show intent. Not so. With felony murder, it is not necessary to prove intent nor even that the accused killed anyone—only that the accused was involved in a felony and that someone died at the scene. This is obviously a much easier case for prosecutors to prove.

As a prison volunteer, I met a woman serving a life sentence at the Maryland Correctional Institution for Women who was convicted of felony murder. Years ago when this woman reported to her boyfriend that person X tried to rape her, the boyfriend went to person X, an altercation ensued and person X died. She is now serving a life sentence. Other women in the *I Wish* lifers group at MCIW report similar miscarriages of justice due to the felony murder rule.

The most egregious case of felony murder I ever heard of was written up in the New York Times on Dec. 4, 2007. Ryan J. Holle was convicted in 2004 in Florida of first-degree murder for lending his Chevrolet Metro to a friend, who used the car to drive others to a house in order to commit a burglary, during which a murder was committed. Holle was offered a plea deal by the prosecutor but unwisely turned it down. He is now serving a sentence of life without parole at the Wakulla Correctional Institute.

In another Florida case a youth is facing a 50 year sentence. William Murphy and friends broke into a house through a window. The homeowner shot and killed one youth and wounded Murphy. Murphy recovered and is charged with the death of his accomplish killed by the home owner.

The charge felony murder grew out of English common law but has since been repealed as outmoded by Great Britain, Canada, and several states in the United States (not including Maryland). The Frontline documentary stated that an estimated 26% of the 2,574 juveniles serving life sentences without parole in this country were convicted under the felony murder rule. According to the 2009 Frontline program, 13 juveniles are serving life sentences without parole in Maryland.

Just as the US Defense Department and State Department should be on guard against "mission creep" in dealing with overseas commitments; so too state agencies should be on guard against "sentence creep." However much the felony murder rule may be appropriate in some cases, it's easy to see how this rule can be misapplied and distorted. A life sentence without possibility of

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parole, originally intended to protect society from the "worst of the worst," suddenly becomes a handy short cut charge to obtain a plea deal or make a conviction in a difficult case with little relation as to actual culpability for a crime.

Given sufficient staff resources, it would be instructive for the Commission on Criminal Sentencing Policy to research the number of inmates in Maryland correctional institutions serving life sentences due to convictions under the felony murder rule. Such information would be useful to help abolish the rule and reserve our most severe punishment to those actually guilty of the crime.

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SPEAKER NAME: Tracy Velázquez

TITLE: Executive Director, Justice Policy Institute (JPI)

TESTIMONY PROVIDED:

Testimony presented by Tracy Velázquez
Executive Director, the Justice Policy Institute
Before the Maryland State Commission on Criminal Sentencing Policy

December 13, 2011

Thank you, Chairperson Leasure and members of the Commission. My name is Tracy Velázquez, and I am executive director of the Justice Policy Institute, a nonprofit organization that seeks to reduce society's reliance on incarceration and the justice system and improve the well-being of all people and communities. I am also a resident of Prince George's County.

I come before you for two reasons. The first is to indicate that we are in support of all the recommendations brought to you today by Frank Dunbaugh in written testimony. Reducing Maryland's racial disparities in the justice system should be a top priority, as should shifting away from a punitive model that is both expensive and ineffective at improving community safety. His solutions – such as eliminating mandatory minimum sentences and shifting to non-incarcerative sentences – are based in sound research and on reforms from around the country. In particular, we need to seek out non-incarcerative options that will create better outcomes for the person who was convicted, but also for the community and for victims that were harmed.

The second reason is to discuss the issue of parole for people serving life sentences. As many of you likely know, JPI produced a video on the impact of having parole for people serving life sentences subject to the approval of the governor of Maryland. Advocates like the Maryland Restorative Justice Initiative worked with legislators to change this policy; now the Governor has 180 days to reject a parole commission recommendation. If he doesn't reject the recommendation, the recommended person is paroled.

JPI was concerned at the time that this legislative change would not actually change whether people who are serving parole-eligible life sentences who are recommended for parole are actually released. Data from the Parole Commission reinforces this concern. Since March 2011, the Governor has acted on 48 cases of people serving life sentences recommended for either a commutation of sentence to a term of years or parole. He has not approved any commutations or parole requests. He has denied 40 commutation requests, 3 medical parole requests, and 5 parole requests. Eight were under 18 at the time of sentencing and 28 were 60 or older at the time of the Governor's decision.

We wanted to alert you as the Sentencing Commission that through the Governor's blanket vetoing of paroles and commutations recommended by the Parole Commission, he is in effect changing all life sentences to life-without-parole sentences. As this commission has heard before, many people accepted plea bargains on the advice of counsel which indicated that they would, with good behavior, have a meaningful opportunity to be released back to their

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community after serving a minimum number of years. And judges who had the option to sentence to either life or life without parole had made the decision to grant the former – a decision that is effectively nullified by the Governor having authority to reject parole board recommendations.

Of particular concern is the issue of people who were juveniles at the time of reception to DPSCS. There are currently 134 people serving a life sentence who were under 18 when they went to prison. Another 59 are serving a "split" life sentence, which means that while a life sentence was required by statute, the judge chose to suspend all but a term of years; it is unknown how many of these youth received a term of years that reasonably makes it likely that they might be released during their lifetime.

Last year's U.S. Supreme Court ruling (Graham v. the state of Florida) stated that youth may not be sentenced to life without parole in non-homicide cases. The Court is taking up this year cases involving juveniles sentenced to life without parole for homicide or murder. The U.S. is one of only a couple of countries that sentences youth to die in prison. I say to you, that here in Maryland, because of the Governor's involvement in the parole process, while on paper we have 11 people serving "juvenile life without parole" sentences, we operationally have over 200.

And given the disparities that exist– of the 2,072 people serving life sentences in Maryland, ¾ (1622) are black – this Commission should be concerned that the serious questions often raised about access to justice in death sentences should also be seriously considered for cases of life. And for juveniles, who often have the poorest access to counsel, this Commission should probe more deeply into why so many black youth are being given life sentences.

JPI's recommendation last year was to remove the Governor completely from the parole process. Let the Parole Commission, which has expertise on this issue, do their job. As it is, only a slim percentage of all the people serving parole eligible life sentences are being recommended for either parole or commutation. But knowing that they might have some opportunity to one day be free again gives people hope, and a reason to continue to better themselves during the decades they are behind bars. I hope you will join us, either individually or as a body, in recommending that the legislature finish the work they started last year, by returning the authority to parole people serving life sentences to the Commission. If you would like any further information on this issue, please don't hesitate to contact me at 202-558-7974, ext. 311 or tracy@justicepolicy.org. Thank you.

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