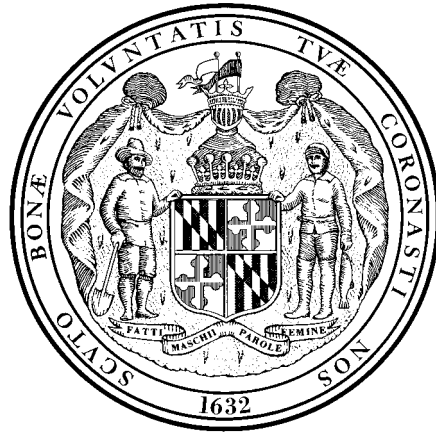


# Maryland State Commission on Criminal Sentencing Policy



## Annual Report

December 2001

Honorable Andrew L. Sonner  
Chairman

Michael Connelly, Ph.D.  
Executive Director

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## **ACKNOWLEDGEMENTS**

This document was written and produced by the State Commission on Criminal Sentencing Policy. The following SCCSP staff members prepared this report: Michael Connelly, Ph.D., Executive Director; Kristi Waits, Associate Director for Data and Analysis; and Kate Wagner, Associate Director for Communications and Information.

The SCCSP thanks the Honorable Marna McLendon, State's Attorney for Howard County and out-going Commissioner, for her years of service and contribution to the work of the Commission and to Maryland sentencing policy.

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## EXECUTIVE SUMMARY

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

In 2001, the State Commission on Criminal Sentencing Policy concluded its process of updating backlogged work from its transitional period and moved forward with new activities. These included completion of the voluntary sentencing guidelines system into the Code of Maryland Regulations; classification of criminal offenses passed by the 2001 Maryland General Assembly; initial recording of new data on reconsidered sentences, types of pleas, victims' involvement in sentencing, coded reasons for sentence departures, and probation revocation; consideration of legislation concerning mandatory sentencing and new fines; dissemination of revised guidelines manuals and worksheets; preliminary planning of training videos and online presentations; development of an advisory worksheet workgroup; piloting of a "deliberative focus group" on correctional options; work with the state Family Violence Council on better data collection on felony domestic violence offenses; and posting of three sets of research reports on the deliberative focus group, on work by graduate students from the University of Maryland Department of Criminology & Criminal Justice, and on staff studies including analyses of diminution credits, three strikes laws, aging offenders, and effects of lead paint exposure on later criminality.

Statistics collected by the SCCSP on judicial departures with the state's voluntary sentencing guidelines revealed a decrease in departures from the voluntary sentencing guidelines. Aggregate departure rates from 1999 through the first four months of 2001 have dropped from 63% to 51%. Drug sentences featured the greatest departure, followed by person sentences. Property sentences demonstrated the least departure. Analysis of sentences by plea/non-plea dispositions discovered that departure rates dropped another 10% for court trials compared to plea bargains. Of particular importance, Maryland sentencing data demonstrated that a disproportionate amount of departure from the guidelines occurred within a single set of offenses, distribution of or possession with intent to distribute cocaine or heroin.

In 2002, the SCCSP will continue its review of the state sentencing guidelines and make necessary changes to ensure their consistency and coherence. It will increase its training and information activities and will work with Maryland circuit courts to decrease rates of departure from the voluntary guidelines. The SCCSP will work diligently to fulfill its legislatively mandated mission of bringing proportional, nondisparate sentencing to the state criminal justice process and to the people of Maryland.

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## **THE STATE COMMISSION ON CRIMINAL SENTENCING POLICY**

### **Establishment and Charge of the State Commission**

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

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

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

### **SCCSP Composition**

The SCCSP is currently composed of 19 voting and 3 ex officio members. The Chairman, the Honorable Andrew L. Sonner, was appointed by the Governor to lead the State Commission on Criminal Sentencing Policy. Table 1 contains a list of members currently appointed to the Commission, the agency/group they represent, and the county where they are located.

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

**Members Appointed by the Governor**

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**Chair**

Honorable Andrew L. Sonner, *Montgomery County*

**State's Attorney**

Honorable Robert Riddle, *Calvert County*

**Criminal Defense Attorney**

Domenic R. Iamele, Esquire, *Howard County*

**Victims' Advocacy Group**

Russell P. Butler, Esquire, *Prince George's County*

**Law Enforcement**

Colonel David B. Mitchell, *Prince George's County*

**Criminal Justice or Corrections Policy Expert**

Charles F. Wellford, Ph.D., *Anne Arundel County*

**Local Detention Center**

Barry L. Stanton, *Prince George's County*

**Public**

Janis Judson, Ph. D., *Frederick County*

**Public**

Arthur A. "Bud" Marshall, Jr., Esquire, *Prince George's County*

**Members Appointed by the Chief Judge of the Court of Appeals of Maryland**

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**Court of Appeals**

Honorable Arrie W. Davis, *Baltimore City*

**Circuit Court**

Honorable John C. Themelis, *Baltimore City*

**District Court**

Honorable Timothy J. Doory, *Baltimore City*

**Members Appointed by the President of the Senate**

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**Senator**

Honorable Delores G. Kelley, *Baltimore City and County*

**Senator**

Honorable Clarence M. Mitchell IV, *Baltimore City and County*

**Members Appointed by the Speaker of the House**

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**Delegate**

Honorable Dana Lee Dembrow, *Montgomery County*

**Delegate**

Honorable Joseph F. Vallario, Jr., *Prince George's County*

**Ex-Officio Members**

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**Attorney General**

J. Joseph Curran, Jr.

**State Public Defender**

Stephen E. Harris

**Secretary of Public Safety & Correctional Services**

Stuart O. Simms

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## SCCSP Authorizations

The General Assembly authorized the SCCSP to “adopt existing sentencing guidelines for sentencing within the limits established by law which shall be considered by the sentencing court in determining the appropriate sentence for defendants who plead guilty or nolo contendere to, or who were found guilty of crimes in a circuit court.” The sentencing guidelines, according to the enabling legislation, were to:

1. Specify the range of sentences applicable to crimes of given degree of seriousness;
2. Specify a range of increased severity for defendants previously convicted of or adjudicated delinquent for one or more crimes before the current offense; and
3. Provide a list of aggravating or mitigating circumstances.

The SCCSP also has authority to “adopt guidelines to identify defendants who would be appropriate for participation in corrections options programs.” These guidelines are to be considered by the sentencing court in selecting either the ordinary guideline sentence for a defendant or sanctions under corrections options.

Furthermore, the SCCSP received the power to collect and automate the state sentencing guidelines worksheets with assistance from the Maryland Administrative Office of the Courts. Using the data collected, the SCCSP is to monitor circuit court sentencing practice and to adopt changes to the guidelines consistent with legislative intent. The data collected would also support the legislatively mandated use of a correctional population simulation model designed to forecast prison bedspace and resource requirements. Forecasts exceeding available state resources would have to include alternative guidelines recommendations to bring prison populations into balance with state resources.

The SCCSP also received the authority to conduct guidelines training and orientation for system participants and other interested parties in a timely manner. The SCCSP was to administer the guidelines system in consultation with the General Assembly and to provide formal fiscal and statistical information on proposed legislation concerning sentencing and correctional practice.

## SCCSP Activities in 2001

The SCCSP had an active year in 2001. Its activities, described below, ranged from submitting the sentencing guidelines process into the Code of Maryland Regulations (COMAR) to piloting special public focus groups on aspects of correctional options programs in the state. As discussed below, its planned activities in 2002 will use 2001 as a blueprint for extending its accomplishments.

**COMAR.** The Maryland General Assembly required in the SCCSP enabling legislation that the Commission put the process for **completion of the voluntary sentencing guideline system into COMAR.** While most of the work toward that goal was achieved in 2000, the actual submission

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process was accomplished in 2001. As a result, all new offenses since 1996 received guidelines seriousness levels, and new items were implemented on the guidelines worksheets. These new items included information on reconsideration of sentences, type of plea, correctional options sanctions, victims' involvement in sentencing, and coded reasons for guidelines departures. The departure reasons were derived from commonly given written reasons for departures from past worksheets, and the SCCSP created and disseminated a bench card listing the common reasons and their codes for easier use by the judges. In addition, the SCCSP had to prepare for COMAR submission its decisions on **classification of the criminal offenses passed by the General Assembly in 2001**. The SCCSP also determined that **additional information should be derived from the worksheets**, including probation revocations and recording of the legally mandated requirement of announcement of expected sentence to be served on violent offenses. Adoption of these new submissions is expected in January 2002.

**Legislation considered.** In 2001 the SCCSP voiced its support for legislation treating the "banking" of earned credits when serving prison sentences the same for those on **mandatory supervision** as for those on parole. Although that legislation was withdrawn in the 2001 legislative session, the SCCSP continued analysis and deliberation and may support the legislation again in 2002. Similarly, throughout 2001, members of the SCCSP participated in a joint subcommittee with the **Article 27 Committee** to develop **legislative proposals to add fines** to offenses that previously did not have them in law. The SCCSP expects to vote on supporting the joint subcommittee's proposal prior to the 2002 General Assembly.

**Training and materials.** SCCSP staff in 2001 continued its mandated work of supplying training and materials on the sentencing guidelines throughout the state. To supplement the work for COMAR, the SCCSP issued a **revised sentencing guidelines manual** and held **training sessions** around the state, at the invitation of circuits and districts. Staff also developed **the script and framework for a training video and a web-based training module for online access**. Staff worked with the production unit of the state Judicial Institute on both items, which were planned for completion and dissemination in early 2002. Finally, the SCCSP authorized creation of a **sentencing guidelines worksheet workgroup**, composed of practitioners and users around the state, to provide regular feedback on use of and problems with the worksheets. The first meeting of the workgroup, held in October 2001, helped to determine the possibilities for greater productivity in the process through development of possible software capabilities.

**Public information.** While much of the SCCSP effort at public information and education went into its web site, discussed later in more detail, the SCCSP did develop different mechanisms in 2001 to hear from the public and to let it know about the state's sentencing issues and policies. Commissioners and staff were **speakers and participants at state, regional, and national meetings, conferences, and workshops on sentencing-related topics** throughout 2001. In addition, the SCCSP piloted a "**deliberative focus group**" (DFG) to determine public reaction to correctional options and public recommendations for funding and implementing them. The first DFG was held in Howard County, and discussions are underway to arrange three or four more in different areas of the state in 2002.

**Subcommittee work.** In addition to the joint subcommittee with the Article 27 Committee, the SCCSP had other permanent and ad hoc subcommittees at work in 2001. The SCCSP's



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permanent subcommittee on sentencing guidelines did the initial work and made the recommendations for all the COMAR submissions mentioned above. In addition, the subcommittee in 2001 began consideration of the **current sentencing practices of circuit courts** for each cell of each matrix in the sentencing guidelines process. This consideration allowed initial deliberation on what cells, if any, should be adjusted in the future and on the possible introduction of **correctional options** recommendations into the matrices. Also, the SCCSP empanelled a temporary subcommittee of Commissioners and other related participants to work with the state Family Violence Council to identify processes and data to **assist better recording and reporting of domestic violence offenses** going through the state's circuit courts. This subcommittee is expected to continue its work into 2002.

**Special reports.** The SCCSP issued several reports in 2001, either done by its staff or submitted to the SCCSP by outside consultants. (These are listed and discussed further in the later section on the Commission web site.) These reports included five done by graduate students in the University of Maryland's Department of Criminology & Criminal Justice. Although the students' work did not necessarily express the opinions or recommendations of the SCCSP, they did draw many favorable responses from readers inside and outside the state. Three more reports—**on effectiveness of sentencing guidelines systems, on trends in women's sentencing, and on trends in penalties for sexual abuse and domestic violence**--have been developed in 2001 and will be completed early in 2002. In addition, a full report on the DFG held in Howard County was completed and disseminated statewide and nationally.

## **The SCCSP Web Site: Resource for State Policymakers**

In 2001, the SCCSP committed its resources to development of a thorough and wide-ranging information and resource base for criminal justice decision-makers in Maryland and across the nation. In addition to the sponsoring and disseminating of the reports previously mentioned, the SCCSP specifically enhanced its web site ([www.gov.state.md.us/sentencing](http://www.gov.state.md.us/sentencing)) to provide electronic access to its growing library of research and data on sentencing and related topics.

The site is separated into eight sections: *Members and Staff*, *Enabling Legislation*, *Origin and Purpose*, *Minutes of Meetings*, *Sentencing Guidelines Information*, *Reports*, *Criminal Justice Resources*, and *Sentencing in the News*. The *Members and Staff* section gives information about current SCCSP members and their predecessors who made up the advisory commission. The subcommittees of the SCCSP are also outlined here. In addition to commissioners, information about the SCCSP staff and how to contact them is located here.

The *Enabling Legislation* section shows House Bill 602 from the 1999 Legislative Session, which created the SCCSP. The responsibilities and goals of the Commission can be found here. The *Origin and Purpose* section offers information about the history, origin, purpose, issues, objectives, membership, and standing committees of the advisory commission and the permanent SCCSP. The minutes from the general and public meetings of the SCCSP are posted here dating back to 1996 and continue through the present.

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The *Sentencing Guidelines Information* section is especially useful for practitioners. Both the old and the new, updated Sentencing Guidelines Manual including sample cases and offense tables can be found here. A copy of the new worksheet, along with summaries of the changes to the new manual and new worksheet, are also included in this section. In an effort to assist those practitioners who complete the sentencing guidelines worksheets, a section entitled “Common Mistakes in Worksheet Completion” is included in this section. Practitioners can also use the staff phone number and email addresses to contact SCCSP staff to set up any training that is needed.

The bulk of the new material that has been added to the site in the past year is located in the *Reports* section of the site. Here the annual reports from 1998, 1999, and 2000 are available in full text. Also, topical research reports are available produced by the SCCSP staff on:

- Public Opinion on Crime and Sentencing in Maryland,
- Sentencing Disparity,
- Major Offense Sentencing,
- Examination of Time-To-Serve,
- Three Strikes Laws,
- Aging Offenders,
- Diminution Credits,
- Death Penalty,
- Interagency and the Criminal History Record, and
- Lead Paint Exposure.

The series entitled, *Issues in Maryland Sentencing* is available in its entirety in the *Reports* section. Graduate students in the Criminal Justice Planning Seminar at the University of Maryland’s Department of Criminology & Criminal Justice produced this series. The 2000 series includes reports on:

- Judicial Compliance with the Maryland Sentencing Guidelines: Review and Recommendations,
- An Analysis of Unwarranted Sentencing Disparity,
- Maryland’s Recodification of Its Criminal Code,
- The Impact of Alternative Sanctions on Prison Populations, and
- The Aging Maryland Prison Population.

These reports were submitted to the SCCSP as research briefs with the purpose of informing commissioners on policy areas of interest.

The section *Sentencing in the News* focuses on current sentencing issues that appear in publications across the country. This section gives a month-by-month review of sentencing issues that have made local and national headlines. Summaries of articles from national newspapers, magazines, academic journals, and web sites are indexed by subject matter, including recent legislation and court decisions.

Finally, the *Criminal Justice Resources* section has three subsections: Publications, State Government and Criminal Justice Links. This section brings together a collection of publications

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by components of the U.S. Department of Justice, Office of Justice Programs and by state sentencing commissions on a variety of sentencing issues; a list of offices in Maryland State government from the legislative, judicial, and executive branches; and an index of resources including federal government offices, research organizations, public interest groups, associations, non-profit groups and public policy think-tanks representing a wide range of viewpoints on criminal justice.

Though the SCCSP expanded the functionality and content of the web site in 2000, work is not yet finished. In 2002, a redesign of the web site will occur to better serve users. Staff will improve the layout and design of the site to make it easier to navigate. The goal is for practitioners, policymakers, and the public to be able to find the information they need without difficulty and confusion. The SCCSP also plans to add online order forms so that manuals, worksheets, or SCCSP publications can be requested directly from the web site. Also under consideration are an interactive training tutorial on worksheet completion to assist practitioners and a forum in which to ask questions and receive answers that will be moderated the staff.

## **Judicial Departure from Maryland's Voluntary Sentencing Guidelines**

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

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

The present examination of judicial departure rates will focus on sentences for **single** count convictions between calendar years 1999 and 2000 as well as January through April of 2001. Single count convictions account for approximately 75% of the total number of guidelines worksheets received each year. For example, of the 11,000 sentencing guidelines worksheets submitted to the AOC or SCCSP during CY 2000, roughly 8,000 contained single count convictions.

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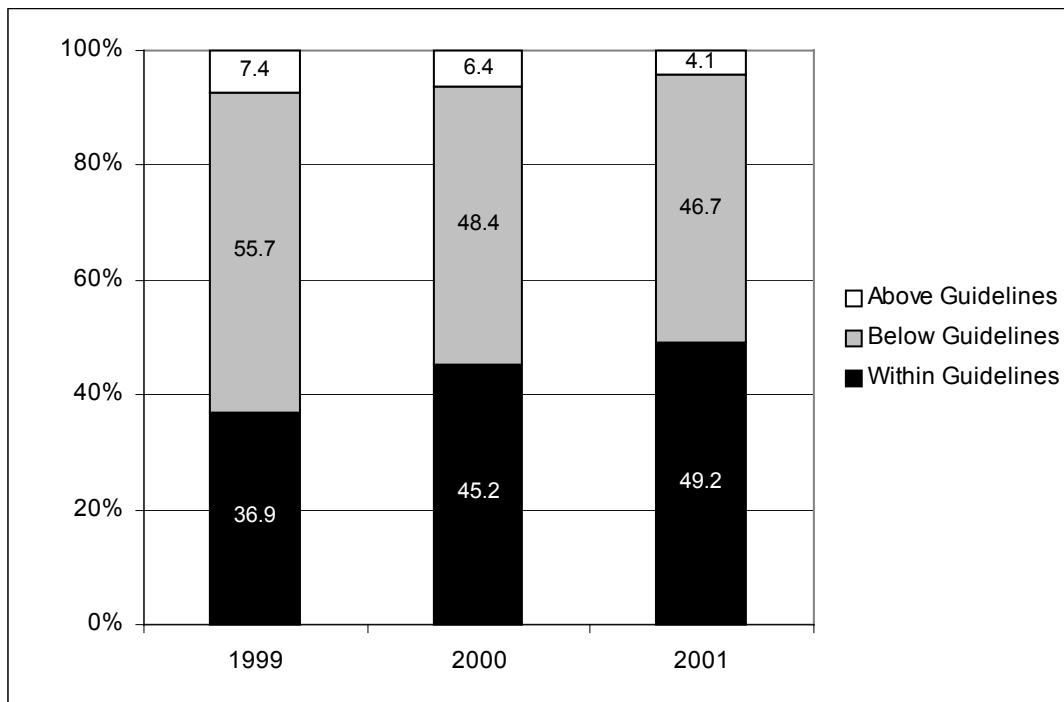
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## Judicial Departure Rates by Calendar Year

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

Figure 1 compares judicial departure rates from calendar years 1999 and 2000 as well as January through April of 2001. The comparison revealed that although aggregate rates of judicial departures were far above a benchmark of 33%, set by the MCCSP and adopted by the SCCSP, the aggregate rate declined from 63% to 55% between 1999 and 2000, and then again from 55% to 51% between 2000 and the first four months in 2001. In the past two and a half years, departure rates have experienced a fairly significant downward trend.

**Figure 1. Judicial Departure Rates by Calendar Year for Single Count Convictions**



## Judicial Departure Rates by Crime Category and Calendar Year

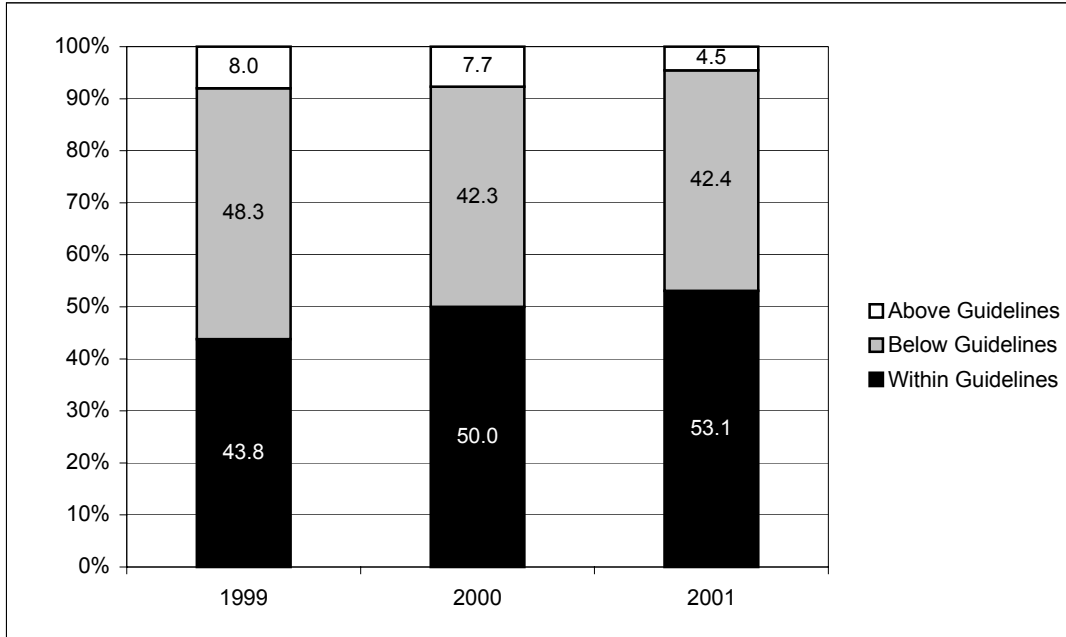
Figures 2 through 4 examine judicial departures by crime category and calendar year. Generally speaking, departure rates were lowest for property offenses and highest for drug offenses. Departure rates between 1999 and 2001 declined slightly for person offenses (56% to 47%), and

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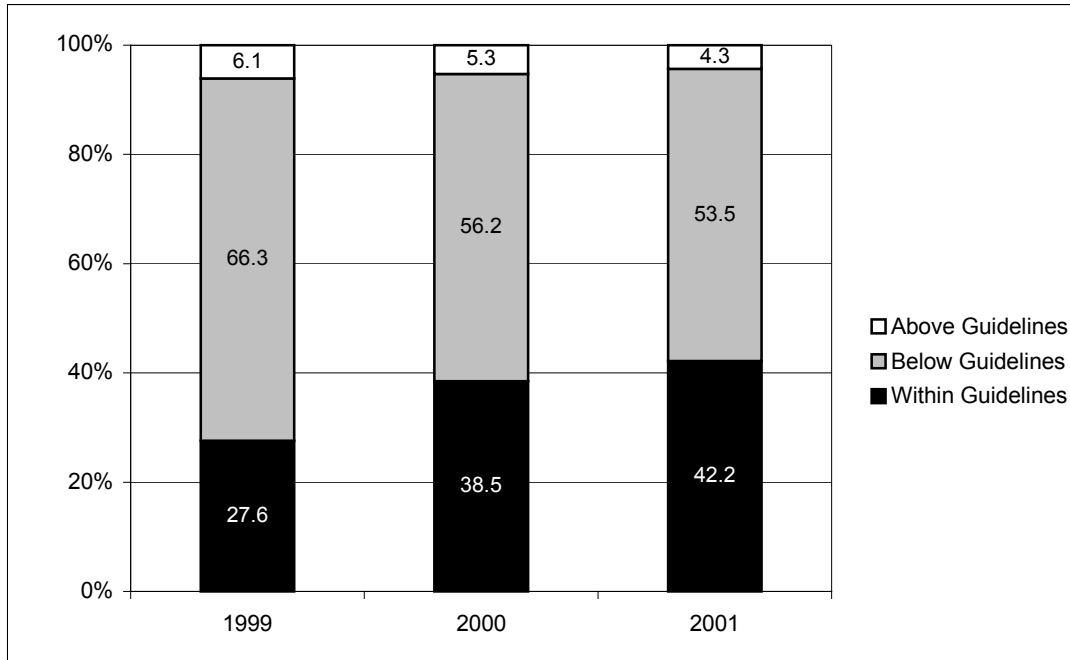
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significantly for drug offenses (72% to 58%). Departure rates for property offenses between 1999 and 2000 remained relatively stable (40%), but declined significantly (27%) in the first four months of 2001. This decline may prove to be far less significant once all of the data have been entered for 2001.

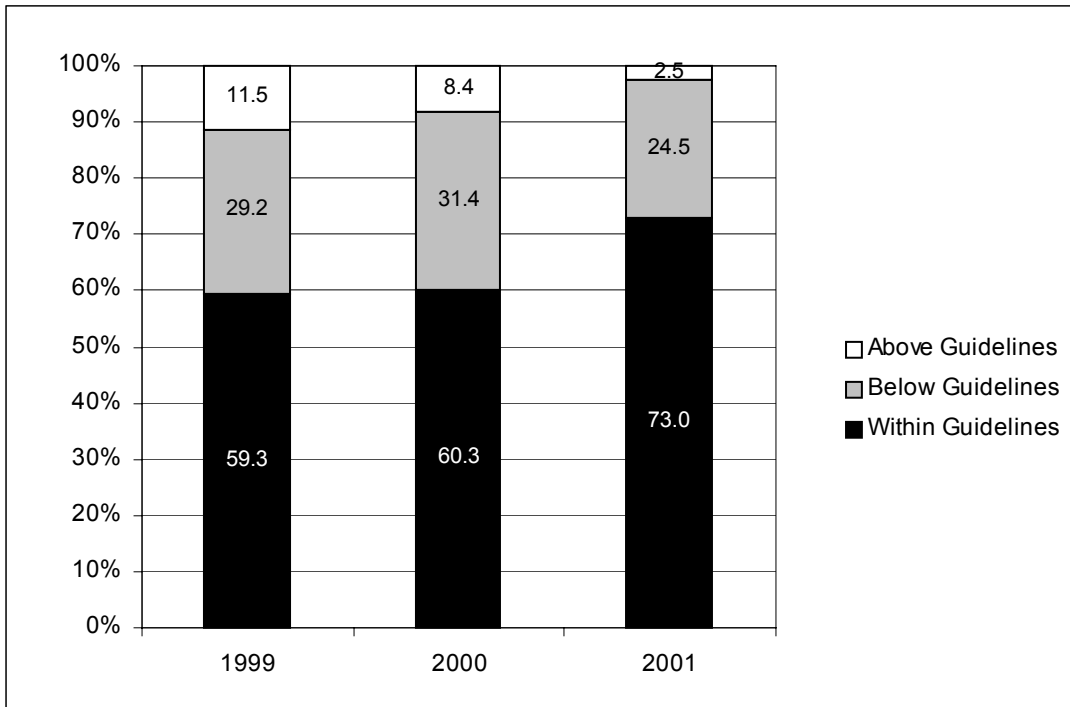
**Figure 2. Judicial Departures by Person Offenses and Calendar Year for Single Count Convictions**



**Figure 3. Judicial Departures by Drug Offenses and Calendar Year for Single Count Convictions**



**Figure 4. Judicial Departures by Property Offenses and Calendar Year for Single Count Convictions**



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## Judicial Departure Rates by Circuit and Calendar Year

Departure rates by judicial circuit and calendar year are shown in Table 2. Aggregate departure rates by circuit ranged from 39% in the First Circuit to 76% in the Eighth Circuit (across two and a half years). While departure rates appeared to be relatively stable between calendar years 1999 and 2000 in four of the eight circuits, the Fourth, Fifth, Seventh, and Eighth Circuits exhibited fairly consistent downward trends. The aggregate departure rate in the Fourth Circuit, for example, decreased from 47% to 36% between 1999 and 2000. Similarly, the aggregate departure rate in the Eighth Circuit decreased from 79% to 71% during the same period of time. Since only four months worth of worksheets have been entered for 2001, it would be premature to draw any conclusions from the significant rate changes found in those data.

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

**Table 2. Judicial Departure Rates by Circuit and Calendar Year for Single Count Convictions**

Judicial Circuit*	Within Guidelines	Guidelines Departures	
		<i>Below</i>	<i>Above</i>
<b>First Circuit</b>			
1999	57.7 %	22.1 %	20.3 %
2000	61.5 %	20.3 %	18.2 %
2001	73.3 %	16.0 %	10.7 %
<i>Total</i>	<i>61.0 %</i>	<i>20.6 %</i>	<i>18.3 %</i>
<b>Second Circuit</b>			
1999	55.0 %	25.0 %	20.0 %
2000	56.4 %	31.2 %	12.4 %
2001	73.4 %	15.6 %	10.9 %
<i>Total</i>	<i>57.6 %</i>	<i>26.6 %</i>	<i>15.8 %</i>
<b>Third Circuit</b>			
1999	49.0 %	44.0 %	7.0 %
2000	54.4 %	38.2 %	7.4 %
2001	66.1 %	28.3 %	5.6 %
<i>Total</i>	<i>52.5 %</i>	<i>40.5 %</i>	<i>7.0 %</i>
<b>Fourth Circuit</b>			
1999	53.3 %	28.6 %	18.1 %
2000	64.3 %	21.6 %	14.1 %
2001	66.2 %	25.2 %	8.6 %
<i>Total</i>	<i>59.8 %</i>	<i>25.2 %</i>	<i>15.0 %</i>
<b>Fifth Circuit</b>			
1999	48.4 %	43.3 %	8.3 %
2000	58.4 %	36.1 %	5.5 %
2001	59.6 %	38.1 %	2.3 %
<i>Total</i>	<i>53.9 %</i>	<i>39.7 %</i>	<i>6.4 %</i>
<b>Sixth Circuit</b>			
1999	45.4 %	43.5 %	11.1 %
2000	48.5 %	46.2 %	5.3 %
2001	54.9 %	37.8 %	7.3 %
<i>Total</i>	<i>47.2 %</i>	<i>44.3 %</i>	<i>8.5 %</i>
<b>Seventh Circuit</b>			
1999	56.5 %	32.6 %	10.9 %
2000	64.7 %	27.3 %	8.0 %
2001	64.9 %	31.5 %	3.6 %
<i>Total</i>	<i>59.9 %</i>	<i>30.7 %</i>	<i>9.4 %</i>
<b>Eighth Circuit</b>			
1999	20.7 %	76.2 %	3.2 %
2000	29.2 %	67.5 %	3.4 %
2001	29.4 %	68.9 %	1.7 %
<i>Total</i>	<i>24.5 %</i>	<i>72.4 %</i>	<i>3.1 %</i>

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



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## Judicial Departure Rates by Circuit and Crime Category

Table 3 assesses departures within judicial circuits by crime category during the past two calendar years (1999 and 2000) as well as the first four months of calendar year 2001. The analysis revealed several seemingly distinct patterns of judicial departure among circuits.

First, in seven of the eight circuits (the First, Second, Third, Fourth, Fifth, Sixth, and Seventh), departure rates for property offenses were significantly low (below 40%). Both the First and Fourth Circuits fell below a benchmark departure rate of 33% (32% and 31%, respectively). Even the Eighth Circuit, whose departure rate was above 40%, was still relatively low (50%).

In addition, the departure rates in four circuits (the First, Second, Fourth, and Seventh) were fairly similar and relatively low for each crime category. For example, in the First Circuit, the departure rate by crime category ranged from 32% for property offenses to 45% for person offenses. The aggregate departure rate across crime categories in these circuits fell below or narrowly passed 40%.

In three of the remaining four circuits (the Third, Fifth, and Sixth), the aggregate departure rate for each circuit fell between 46% and 51%. Both the Fifth and Sixth Circuits had relatively stable departure rates for all three crime categories. In the Third Circuit though, the aggregate departure rate was pulled up by the rate in one crime category (person). Compared to the rate of drug offenses (44%) and property offenses (39%), person offenses in the Third Circuit had a significantly higher departure rate (56%).

Finally, the Eighth Circuit's aggregate departure rate fell far above the rates of the other seven circuits. In this circuit, the departure rate for drug offenses was especially high (81%). The very high departure rate for drug offenses, coupled with the large number of drug offenses relative to person and property offenses, drove the Circuit's aggregate departure rate. Analysis of factors influencing drug sentencing in the Eighth Circuit reveals influence of caseloads, plea-bargaining, and jury nullifications. While the aggregate departure rate in the Eighth Circuit was 76%, the departure rate for both person offenses and property offenses was considerably less (59% and 50%, respectively).

**Table 3. Judicial Departure Rates by Circuit and Crime Category for Single Count Convictions**

Judicial Circuit	Within Guidelines	Guidelines Departures	
		<i>Below</i>	<i>Above</i>
<b>First Circuit</b>			
Person	55.1 %	35.1 %	9.9 %
Drug	62.6 %	12.1 %	25.3 %
Property	67.6 %	13.9 %	18.5 %
<b>Second Circuit</b>			
Person	52.1 %	33.7 %	14.1 %
Drug	59.7 %	20.7 %	19.7 %
Property	60.3 %	30.5 %	9.2 %
<b>Third Circuit</b>			
Person	43.6 %	50.2 %	6.2 %
Drug	56.4 %	36.0 %	7.6 %
Property	61.3 %	31.0 %	7.7 %
<b>Fourth Circuit</b>			
Person	49.6 %	36.2 %	14.2 %
Drug	63.4 %	19.5 %	17.1 %
Property	68.7 %	22.6 %	8.7 %
<b>Fifth Circuit</b>			
Person	48.5 %	44.6 %	6.9 %
Drug	53.7 %	39.6 %	6.7 %
Property	59.9 %	34.8 %	5.3 %
<b>Sixth Circuit</b>			
Person	50.0 %	40.1 %	9.9 %
Drug	45.5 %	47.8 %	6.7 %
Property	54.7 %	35.3 %	10.0 %
<b>Seventh Circuit</b>			
Person	54.4 %	36.7 %	8.9 %
Drug	61.4 %	30.0 %	8.7 %
Property	67.3 %	20.9 %	11.7 %
<b>Eighth Circuit</b>			
Person	41.1 %	53.8 %	5.1 %
Drug	19.5 %	78.1 %	2.3 %
Property	49.6 %	40.0 %	10.4 %

### Judicial Departure Rates by Mode of Disposition

Figure 5 examines whether judicial departure varies by mode of disposition (i.e., plea agreement, plea without agreement, jury trial, and court trial) using two and a half years of data (CY 1999 through April 2001). The vast majority of cases were resolved by means of a plea agreement (86%). Another 10% were resolved by a plea without agreement, and approximately 4% were resolved by either a jury or court trial (2% court trial and 2% jury trial).

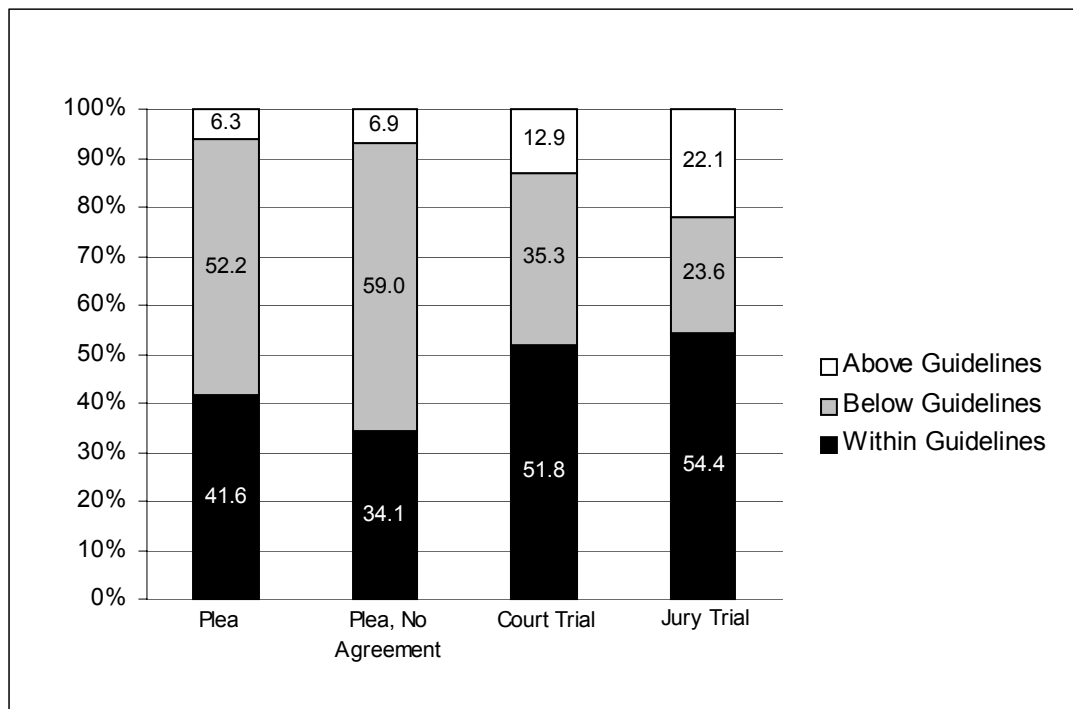
The analysis revealed that aggregate departure rates varied as a function of disposition type. Departure rates were higher for cases resolved by a plea agreement (59%) or plea without

agreement (66%), and lower for cases that went to trial by court or jury (48% and 46%, respectively). This was not true of all crime categories, however. Property offenders were more likely to receive a sentence *within* the recommended guidelines range if the case was resolved by a plea agreement or plea without agreement. Both person and drug offenders were more likely to receive a sentence *below* the recommended guidelines range if the case was resolved by a plea agreement.

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

Clearly, since the vast majority of cases were disposed by plea agreements or pleas without agreement, the departure rate for these disposition types strongly influenced the aggregate departure rate. In fact, the aggregate departure rate across all modes of disposition was virtually identical to the departure rate for cases resolved by a plea agreement (41.4% and 40.8%, respectively).

**Figure 5. Judicial Departure Rates by Disposition Type for Single Count Convictions**



**Table 4. Judicial Departure Rates by Disposition Type and Crime Category for Single Count Convictions**

Disposition Type	Within Guidelines	Guidelines Departures	
		<i>Below</i>	<i>Above</i>
<b>Plea</b>			
Person	46.0 %	47.6 %	6.4 %
Drug	34.4 %	60.0 %	5.6 %
Property	60.8 %	30.5 %	8.8 %
<b>Plea, No Agreement</b>			
Person	46.8 %	44.8 %	8.4 %
Drug	24.2 %	70.8 %	5.0 %
Property	61.8 %	23.7 %	14.5 %
<b>Court Trial</b>			
Person	39.6 %	47.8 %	12.6 %
Drug	63.4 %	26.8 %	9.9 %
Property	56.6 %	22.6 %	20.8 %
<b>Jury Trial</b>			
Person	58.3 %	22.6 %	19.0 %
Drug	42.6 %	29.7 %	27.7 %
Property	58.7 %	15.2 %	26.1 %

## Summary

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

Examination of four subsequent years of data (FY 1997 through FY 2000) revealed a continued upward trend in aggregate departure rates. This was true primarily for drug offenses where the aggregate rose from 54% to 70% during that four-year period. The departure rate for person offenses increased as well, but the magnitude of the increase was much smaller (from 45% to 50%). Historically, the departure rate for property offenses has been lower than the departure rate for both person and drug offenses.

The current analysis revealed that although aggregate rates of judicial departures remain far above a benchmark of 33%, the aggregate rate declined from 63% to 55% between 1999 and 2000, and then again from 55% to 51% between 2000 and the first four months in 2001. In the past two and a half years, departure rates across the board have experienced a fairly significant downward trend.

Comparison of judicial departure rates by mode of disposition (plea agreement, plea without agreement, jury trial, or court trial) revealed that sentences imposed as a result of a plea agreement or plea without agreement were more likely to fall below the recommended

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sentencing guidelines range (although this was not true for property offenses). Upward departures were most common among cases resolved by a jury trial.

The overall downward trend in judicial departure rates was observed in all judicial circuits between CY 1999 and CY 2000. The rates in five of the eight circuits (Third, Fourth, Fifth, Seventh, and Eighth) fell more than 5%. Both the Fourth and Fifth Circuits experienced a departure rate nearly twice that amount (11% and 10%, respectively).

The remaining three circuits (First, Second, and Sixth), however, exhibited a less significant downward trend. The departure rates in the First and Sixth Circuits decreased by approximately 3%, while the Second Circuit only experienced a 1% decrease.

The Sixth and Eighth Circuits may be distinguished from the other six circuits by the high rate of departure for drug offenses (55% and 80%, respectively). In the Eighth Circuit especially, the very high departure rate for drug offenses in combination with the large number of drug offenses relative to person and property offenses, strongly influenced the aggregate compliance rate.

The exploratory analysis of compliance for drug offenses from 1999 through April 2001 suggests that the high departure rate stems primarily from the high departure rate for cocaine and heroin distribution cases (Seriousness Category III – Without Importation). If these two offenses were excluded from the departure calculation, the statewide departure rate for all other drug offenses would have decreased of 24%. Similarly, if these two offenses were excluded from the statewide departure rate for all offenses, the overall rate would have decreased 12% for the period.

The present analyses suggest that the aggregate departure rates have begun a downward trend over the past two years. Trends in aggregate departure rates, however, obscure variation at the circuit level, as evidenced by the range in departure rate percentages. The increase in the aggregate judicial departure rate for drug offenses was strongly influenced by the high departure rate for two offenses, which occurred predominantly in one circuit.

In 2002, the SCCSP will begin reporting data on new elements on the sentencing guidelines worksheet, described earlier. A preliminary analysis of the first four months of the worksheet's use indicates that some circuits and counties are not returning all worksheets or are returning them with the new elements or questions about race and ethnicity incomplete. Judges have indicated that they believe requests for these data are inappropriate for their sentencing function. The SCCSP may, as a result, be forced to make special reports of these data in the next annual report, in its newsletters, or on its web site in the future. The SCCSP and its staff will work closely with the judges to try to ensure better understanding and cooperation on these concerns in the coming year.

## **SCCSP Planned Activities for 2002**

While the work of the SCCSP is frequently driven by pressing policy issues and concerns that develop on short timeframes, the SCCSP does have several items on its action agenda for 2002. As mentioned, the Sentencing Guidelines Subcommittee will examine **possible adjustments to**

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**the sentence ranges** in the cell of each guidelines matrix, as well as considering **inclusion of correctional options into the matrices**. **Criminal offenses and changes in the criminal code**, including any changes in fines, made by the General Assembly in 2002 will be incorporated into the guidelines and submitted to COMAR. The SCCSP will **report data on the new items added to the sentencing guidelines worksheet**, including information on departures by plea type and probation revocation, reasons for departures, victims' involvement, and reconsideration of sentences. **New reports on sentencing-related issues and concerns** will go up on the SCCSP web site on a regular basis for use by the public and state policymakers. The SCCSP will continue its use of **DFG's**, perhaps moving into other topic areas after issuing a final report on public reaction to correctional options. SCCSP staff will develop and expand its **training exercises and materials** to ease and promote the use of the guidelines in all circuit courts. In addition, staff will be actively involved in the planning and holding of **the 2002 conference of the National Association of Sentencing Commissions**, to be held in Williamsburg, VA.

## Conclusion

In 2001, the State Commission on Criminal Sentencing Policy concluded its process of updating backlogged work from its transitional period and moved forward with new activities. These included completion of the voluntary sentencing guidelines system into the Code of Maryland Regulations; classification of criminal offenses passed by the 2001 Maryland General Assembly; initial recording of new data on reconsidered sentences, types of pleas, victims' involvement in sentencing, coded reasons for sentence departures, and probation revocation; consideration of legislation concerning mandatory sentencing and new fines; dissemination of revised guidelines manuals and worksheets; preliminary planning of training videos and online presentations; development of an advisory worksheet workgroup; piloting of a "deliberative focus group" on correctional options; work with the state Family Violence Council on better data collection on felony domestic violence offenses; and posting of three sets of research reports on the deliberative focus group, on work by graduate students from the University of Maryland Department of Criminology & Criminal Justice, and on staff studies including analyses of diminution credits, three strikes laws, aging offenders, and effects of lead paint exposure on later criminality.

Statistics collected by the SCCSP on judicial compliance with the state's voluntary sentencing guidelines revealed a decrease in departures from the voluntary sentencing guidelines. Aggregate departure rates from 1999 through the first four months of 2001 have dropped from 63% to 51%. Drug sentences featured the greatest departure, followed by person sentences. Property sentences demonstrated the least departure. Analysis of sentences by plea/non-plea dispositions discovered that departure rates dropped another 10% for court trials compared to plea bargains. Of particular importance, Maryland sentencing data demonstrated that a disproportionate amount of departure from the guidelines occurred within a single set of offenses, distribution of or possession with intent to distribute cocaine or heroin.

In 2002, the SCCSP will continue its review of the state sentencing guidelines and make necessary changes to ensure their consistency and coherence. It will increase its training and information activities and will work with Maryland circuit courts to decrease rates of departure

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from the voluntary guidelines. The SCCSP will work diligently to fulfill its legislatively mandated mission of bringing proportional, nondisparate sentencing to the state criminal justice process and to the people of Maryland.