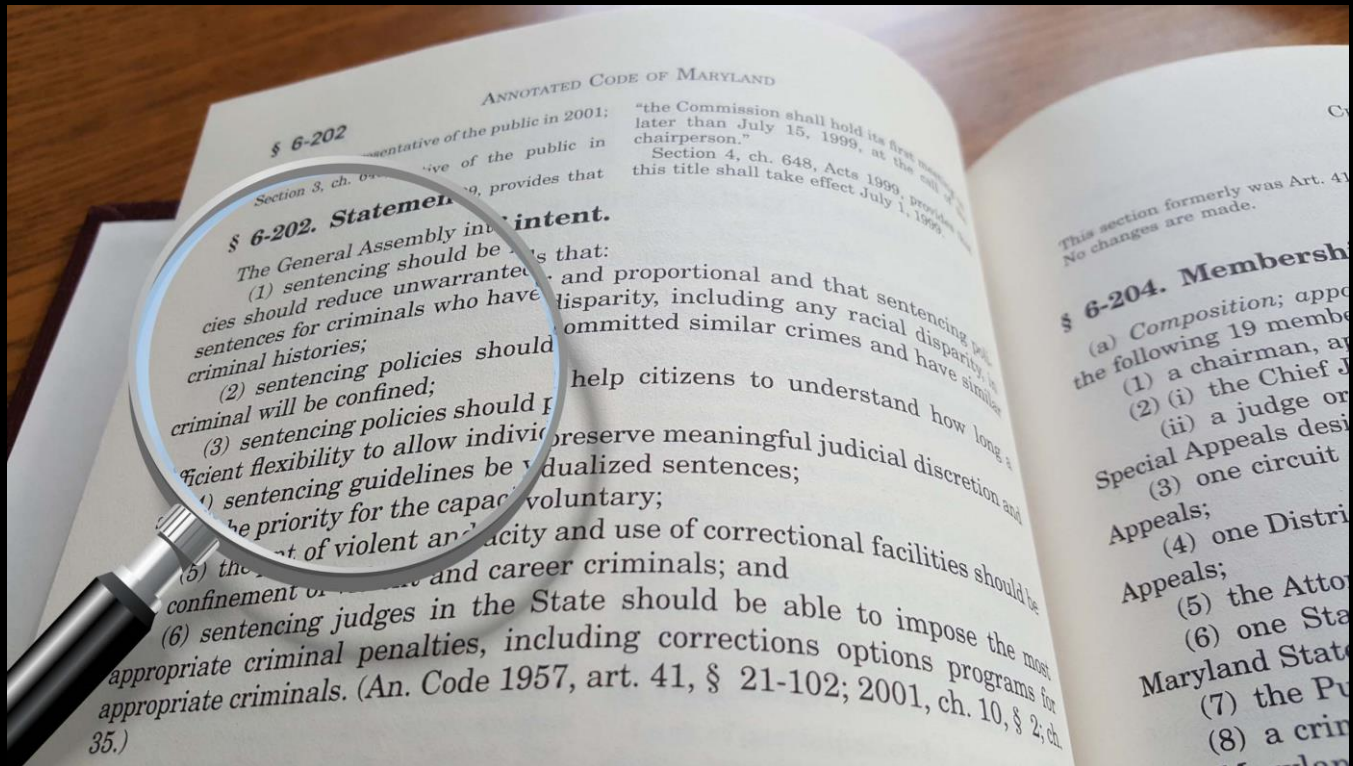


# Maryland State Commission on Criminal Sentencing Policy



## Annual Report 2016

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## COMMISSION MEMBERS

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Criminal Justice/Corrections Policy Expert

**Brian D. Johnson, Ph.D.**

State's Attorney

**Honorable Brian L. DeLeonardo**

Criminal Defense Attorney

**Richard A. Finci, Esquire**

Victims' Advocacy Group

**Honorable Laura L. Martin**

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**Colonel William M. Pallozzi**

Local Detention Center

**LaMonte E. Cooke**

Public Representatives

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**Barbara Dorsey Domer**

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Representative of the Circuit Courts

**Honorable Shannon E. Avery**

Representative of the District Court

**Honorable Patrice E. Lewis**

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**Honorable Robert G. Cassilly**

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**Honorable Curtis S. Anderson**

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**Honorable Brian E. Frosh**

**(Elizabeth Embry, Esquire, Attorney General's Representative)** (July 2016 – Present)

**(Megan Limarzi, Esquire, Attorney General's Representative)** (2011– January 2016)

Public Defender

**Paul B. DeWolfe, Esquire**

**(William Davis, Esquire, Public Defender's Representative)**

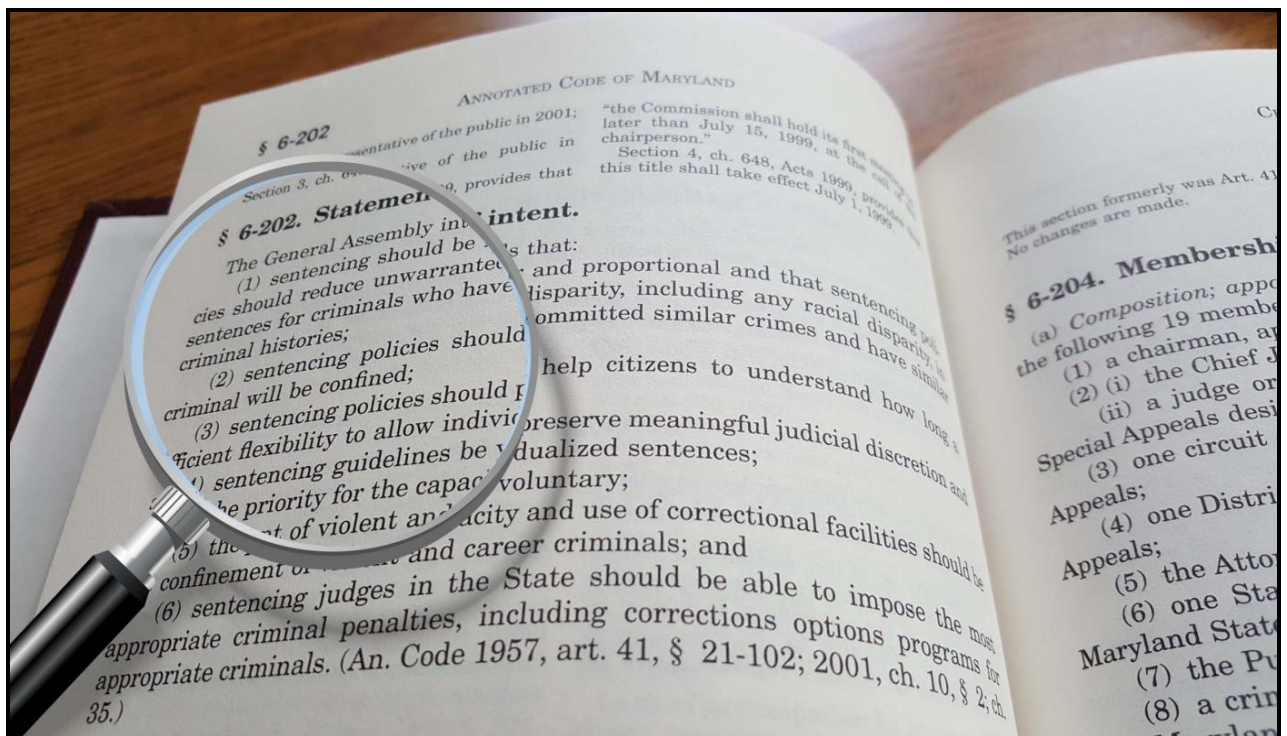
Secretary of Department of Public Safety & Correctional Services

**Stephen T. Moyer**

**(Rachel Sessa, Secretary's Representative)**

# Maryland State Commission on Criminal Sentencing Policy

## 2016 | Annual Report



**MSCCSP**  
**University of Maryland**  
**4511 Knox Road, Suite 309, College Park, MD 20742**  
**[www.msccsp.org](http://www.msccsp.org)**



## **COMMISSION STAFF**

### **Executive Director**

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### **Research Director**

Stacy Skroban Najaka, Ph.D.

### **Program Analyst**

Sarah Bowles

### **Administrative/Training Coordinator**

Katharine Pembroke

### **Policy Analyst**

Jennifer Lafferty (August 2016 – Present)

Justin Bernstein (through August 2016)

## **INTERNS**

The MSCCSP would like to acknowledge the assistance of the following student interns who worked with the MSCCSP during the past year:

Kwame Apea, University of Maryland

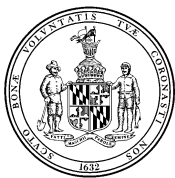
Tessa Guiton, University of Maryland

Elizabeth Mullin, University of Maryland

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# MSCCSP

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## Maryland State Commission on Criminal Sentencing Policy

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### Chair

Hon. Glenn T. Harrell, Jr.

### Vice-Chair

Hon. Shannon E. Avery

### Commissioners

Del. Curtis S. Anderson

Sen. Robert G. Cassilly

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Sec. Stephen T. Moyer

Col. William M. Pallozzi

Hon. James P. Salmon

Del. Joseph F. Vallario, Jr.

### Executive Director

David A. Soulé, Ph.D.

January 25, 2017

To: The Honorable Lawrence J. Hogan, Jr., Governor  
The Honorable Boyd K. Rutherford, Lt. Governor  
The Honorable Mary Ellen Barbera, Chief Judge of Maryland  
The Honorable Brian E. Frosh, Attorney General of Maryland  
The Honorable Members of the General Assembly of Maryland

Pursuant to Criminal Procedure Article, § 6-209, Annotated Code of Maryland, the Maryland State Commission on Criminal Sentencing Policy (the MSCCSP or Commission) is required annually to review sentencing policy and practice and report upon the work of the Commission. In compliance with this statutory mandate, we submit respectfully for your review the 2016 Annual Report of the MSCCSP.

This report details the 2016 activities of the MSCCSP, highlighted by implementation of revisions to the sentencing matrix for certain drug offenses, continued deployment of the Maryland Automated Guidelines System (MAGS), and voting to adopt proposed changes to the sentencing guidelines corresponding to penalty revisions advanced by the Justice Reinvestment Act. Additionally, the report summarizes circuit court sentencing practices and trends in Maryland for fiscal year 2016, while providing a comprehensive examination of judicial compliance with the state's voluntary sentencing guidelines, describing information provided on the state's sentencing guidelines worksheets, and offering finally a description of planned activities for 2017. We hope that this report and the other resources provided by the MSCCSP help inform and promote fair, proportional, and non-disparate sentencing practices throughout Maryland. In accordance with § 2-1246 of the State Government Article, Annotated Code of Maryland, we have submitted five printed copies of the MSCCSP 2016 Annual Report to the Library of the Department of Legislative Services. Although the MSCCSP was not able (for budget reasons) to otherwise print and distribute hard copies of the report for public consumption this year, it is accessible for viewing and downloading on the Commission's website at: <http://www.msccsp.org/Reports/>.

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

Senior Judge Glenn T. Harrell, Jr., (Ret.)  
Chair

## TABLE OF CONTENTS

|   |            |
|---|------------|
| <b>Executive Summary .....</b>  | <b>iii</b> |
| <b>The Maryland State Commission on Criminal Sentencing Policy .....</b>  | <b>1</b>   |
| Guidelines Background.....  | 1          |
| MSCCSP Background .....   | 4          |
| MSCCSP Structure.....   | 5          |
| <b>MSCCSP Activities in 2016 .....</b>  | <b>8</b>   |
| Review of New and Amended Offenses Passed During the 2016 Legislative Session.....  | 8          |
| Miscellaneous Modifications to the Guidelines Offense Table in 2016 .....   | 20         |
| Revisions to the Sentencing Matrix for Drug Offenses .....  | 21         |
| Subcommittee Work .....   | 22         |
| Review of <i>Criminal Nonsupport</i> (Family Law, § 10-203) and <i>Criminal Contempt</i> (Common Law) as Guidelines Offenses..... | 23         |
| Revisions to Prior Adult Criminal Record Scoring Instructions .....   | 24         |
| Maryland Automated Guidelines System (MAGS).....  | 25         |
| Identification of Guidelines-Eligible Sentencing Events.....  | 28         |
| Training and Education .....  | 29         |
| Information, Data Requests, and Outreach.....   | 31         |
| Data Collection, Oversight, and Verification .....  | 32         |
| Risk Assessment at Sentencing.....  | 33         |
| Juvenile Delinquency Score Project.....   | 34         |
| Additional Activities Related to Justice Reinvestment Act .....   | 35         |
| Public Comments Hearing .....   | 37         |
| <b>Sentences Reported in FY 2016 .....</b>  | <b>38</b>  |
| Sentencing Guidelines Worksheets Received.....  | 38         |
| Guidelines Case Characteristics .....   | 40         |
| <b>Judicial Compliance with Maryland's Voluntary Sentencing Guidelines .....</b>  | <b>51</b>  |
| Judicial Compliance Rates Overall .....   | 51         |
| Judicial Compliance Rates by Circuit .....  | 53         |
| Judicial Compliance Rates by Crime Category .....   | 55         |
| Judicial Compliance Rates by Type of Disposition .....  | 56         |
| Judicial Compliance Rates by Crime Category and Disposition .....   | 57         |
| Departure Reasons.....  | 58         |

## TABLE OF CONTENTS (CONTINUED)

|  |           |
|--|-----------|
| <b>Additional Information Collected .....</b>  | <b>61</b> |
| Report on Adjustments from Reconsidered Sentences Involving Crimes of<br>Violence.....                       | 61        |
| Economic Loss in Title 7 and Title 8 Crimes .....  | 62        |
| Victim Information .....   | 62        |
| <b>MSCCSP Planned Activities for 2017.....</b>   | <b>65</b> |
| <b>Appendices.....</b>   | <b>66</b> |
| Appendix A: Sentencing Guidelines Matrices.....  | 67        |
| Appendix B: Maryland Sentencing Guidelines Worksheet.....  | 70        |
| Appendix C: Sentencing Guidelines Compliance and Average Sentence by<br>Offense Type, Fiscal Year 2016 ..... | 71        |
| Appendix D: Description of Types of Disposition.....   | 72        |
| Appendix E: Common Departure Reasons Listed on the Sentencing Guidelines<br>Departure Reference Card .....   | 73        |

## EXECUTIVE SUMMARY

The Judiciary introduced the concept of judicial sentencing guidelines in Maryland in the late 1970s. The Court of Appeals formed a committee in May 1978 to review recent developments in sentencing in the United States, study the major proposals for reform (e.g., determinate sentencing, mandatory sentencing, sentencing guidelines, sentencing councils), and consider sentencing practices in Maryland. The sentencing guidelines were developed based on extensive collection and analysis of data on past sentencing practices in Maryland, and their design accounts for both offender and offense characteristics in determining the appropriate sentence range. Beginning in June 1981, four jurisdictions representing a diverse mix of areas piloted the sentencing guidelines. At the conclusion of the test period in May 1982, the Judicial Conference decided to continue using sentencing guidelines in the pilot jurisdictions for an additional year, given the initial success of the guidelines. After two years of experience with sentencing guidelines in Maryland on a test basis, in 1983 the Judicial Conference voted favorably on (and the Maryland General Assembly approved) the guidelines, adopting them formally statewide.

The voluntary sentencing guidelines cover most circuit court cases and provide recommended sentence ranges for three broad categories of offenses: person, drug, and property. The guidelines recommend whether to incarcerate an offender and if so, provide a recommended sentence length range, based largely on the available data for how Maryland circuit court judges have sentenced similar convictions. The sentencing guidelines are advisory and judges may, at their discretion, impose a sentence outside the guidelines. However, judges are asked to document the reason or reasons for sentencing outside of the guidelines if they do so.

The Maryland General Assembly created the Maryland State Commission on Criminal Sentencing Policy (MSCCSP or Commission) in 1999 to oversee sentencing policy and to monitor the state's voluntary sentencing guidelines. The General Assembly established six goals to guide the Commission's work: (1) sentencing should be fair and proportional and sentencing policies should reduce unwarranted disparity, (2) sentencing policies should help citizens understand how long a criminal will be confined, (3) the preservation of meaningful judicial discretion, (4) sentencing guidelines should be voluntary, (5) the prioritization of prison usage for violent and career criminals, and (6) the imposition of the most appropriate criminal penalties. The Commission consists of 19 members, including members of the Judiciary,



criminal justice practitioners, members of the Senate of Maryland and the House of Delegates, and representatives of the public.

The primary responsibilities of the MSCCSP include: collection and automation of the sentencing guidelines worksheets, maintaining the sentencing guidelines database, and conducting training and orientation for criminal justice personnel. In addition, the Commission monitors judicial compliance with the guidelines and may adopt changes to the guidelines consistent with the sentencing practices of Maryland circuit court judges.

In 2016, the MSCCSP reviewed new and amended criminal laws from the 2016 Legislative Session, reviewed and classified previously unclassified offenses, officially adopted changes to cells in the sentencing matrix for certain drug offenses, reviewed the status of *criminal nonsupport* and *criminal contempt* as guidelines offenses, and revised the prior adult criminal record scoring instructions. The MSCCSP also provided training and education to promote the consistent application of the sentencing guidelines, provided data and sentencing-related information to state agencies and other interested parties, and completed data verification and data entry reviews to improve the accuracy of the sentencing guidelines data. Additionally, the MSCCSP completed several key tasks towards the continued deployment of the Maryland Automated Guidelines System (MAGS). The Commission also worked on the risk assessment feasibility study and moved forward on the juvenile delinquency score project, both conducted with research teams from the University of Maryland, College Park, and began work on activities mandated by the Justice Reinvestment Act of 2016 (JRA), including a study on alternatives to incarceration. Finally, the MSCCSP held an annual public comments hearing in December to provide a forum for the public to provide testimony and feedback on sentencing-related issues.

In fiscal year 2016, the MSCCSP received guidelines worksheets for 10,352 sentencing events in the state's circuit courts. A worksheet was submitted for 85% of guidelines-eligible cases. Worksheets for 3,081 of the 10,352 sentencing events were submitted electronically using MAGS in Calvert, Cecil, Charles, Frederick, Harford, Montgomery, Prince George's, and St. Mary's Counties. The vast majority of cases were resolved by either an ABA plea agreement (42.9%) or a non-ABA plea agreement (38.9%). Slightly more than three-quarters of guidelines cases were sentenced to incarceration, and the median sentence length among those incarcerated (excluding suspended time) was 1.3 years.

The overall guidelines compliance rate in fiscal year 2016 was 77.8%, which exceeded the Commission's goal of 65% compliance. When departures occurred, they were more often

below the guidelines than above. All eight trial court judicial circuits met the benchmark rate of 65% compliance. Departures were least likely for person offenses, followed closely by property offenses and drug 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 plea with no agreement. When considering compliance rates by both crime category and disposition, the highest compliance rate was observed for person offenses adjudicated by a plea agreement. Drug offenses resolved by a bench trial had the lowest compliance rate, and the majority of departures in this category were below the guidelines.

Reasons for departure continued to be underreported in fiscal year 2016. 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 the State's Attorney or Division of Parole and Probation's recommendation.

The MSCCSP has several important activities planned for 2017. In addition to performing routine activities, such as collecting sentencing guidelines worksheets, maintaining the sentencing guidelines database, monitoring judicial compliance with the guidelines, and providing sentencing guidelines education and training, the MSCCSP will review all criminal offenses and changes in the criminal laws passed by the General Assembly during the 2017 Legislative Session and adopt or revise seriousness categories for new and revised offenses as needed. Additionally, the MSCCSP will officially adopt and implement the approved changes to the sentencing guidelines corresponding to the October 1, 2017, enactment of penalty revisions resulting from the JRA. The MSCCSP will continue its work on additional duties mandated by the JRA, including the study on alternatives to incarceration, and will begin collaboration with the Justice Reinvestment Oversight Board (JROB). Furthermore, the MSCCSP will continue a gradual statewide roll-out of MAGS, working with individual jurisdictions to establish secure login procedures for access to MAGS while also providing orientation and training on the use of the application. The MSCCSP will also coordinate with the Administrative Office of the Courts (AOC) to continue planning for interoperability with the Judiciary's new case management system, Maryland Electronic Courts (MDEC). Finally, the MSCCSP will work further with researchers from the University of Maryland to complete an empirical review of the juvenile delinquency component of the offender score. The activities described above are just a few of

the many tasks that will be completed by the MSCCSP in 2017 to support the consistent, fair, and proportional application of sentencing practice in Maryland.

# THE MARYLAND STATE COMMISSION ON CRIMINAL SENTENCING POLICY

## Guidelines Background

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### History of the Maryland Sentencing Guidelines

The Judiciary introduced the concept of judicial sentencing guidelines in Maryland in the late 1970s in response to a growing concern regarding unwarranted sentencing disparity and a general interest in sentencing by the public, legislators, and other elected officials. The Court of Appeals formed the Judicial Committee on Sentencing in May 1978 to review recent developments in sentencing in the United States, study the major proposals for reform (e.g., determinate sentencing, mandatory sentencing, sentencing guidelines, sentencing councils), and consider sentencing practices in Maryland. In its report to the Maryland Judicial Conference, the Committee on Sentencing recommended a system of voluntary, descriptive sentencing guidelines for use in circuit courts only, which the Judicial Conference unanimously approved in April 1979. Later that year Maryland received a grant from the National Institute of Justice to participate in a multijurisdictional field test of sentencing guidelines. Under the grant, a system of sentencing guidelines for Maryland's circuit courts developed, along with an Advisory Board to oversee the guidelines. The sentencing guidelines were developed based on extensive collection and analysis of data on past sentencing practices in Maryland, as well analyses of surveys sent to a sample of judges asking them to report on factors considered at sentencing in a series of hypothetical scenarios. The end result was a guidelines design that accounts for both offender and offense characteristics in determining the appropriate sentence range. Beginning in June 1981, four jurisdictions representing a diverse mix of areas piloted the sentencing guidelines. At the conclusion of the test period in May 1982, the Judicial Conference decided to continue using sentencing guidelines in the pilot jurisdictions for an additional year, given the initial success of the guidelines. After two years of experience with sentencing guidelines in Maryland on a test basis, in 1983 the Judicial Conference voted favorably on (and the Maryland General Assembly approved) the guidelines, adopting them formally statewide.

Since that time, the sentencing guidelines have been subject to several important reviews. The first major review of the guidelines took place in 1984 resulting in revisions to both the sentencing guidelines worksheet and the sentencing guidelines manual. In 1987, the Advisory Board conducted a comprehensive review of the guidelines informed by over three years of sentencing data collected from the time of guidelines implementation. In addition to changing the sentencing guidelines matrices and the type of information collected on the sentencing

guidelines worksheet, this revision added arson of a dwelling, escape, and perjury to the guidelines, and provided that an offender's prior record remains the same across all convicted offenses in multiple event cases. Subsequently, from 1991 through 1994, the Advisory Board conducted a three-year review of the sentencing practices of circuit court judges. This review established the 65% guidelines compliance standard relied upon today by the Maryland State Commission on Criminal Sentencing Policy (MSCCSP or Commission) when considering potential modifications to the guidelines.<sup>1</sup> In addition to these notable revisions, there have been many other changes throughout the history of the guidelines, as it has always been the intention that the guidelines remain an accurate reflection of current sentencing practices in Maryland.

### **The Present Sentencing Guidelines**

Pursuant to Criminal Procedure Article (CP), § 6-216, Annotated Code of Maryland, the circuit courts shall consider the sentencing guidelines in deciding the proper sentence. The voluntary sentencing guidelines apply to cases prosecuted in Maryland circuit courts generally, with a few key exceptions. Because the guidelines were designed to apply to incarcerable offenses for which the circuit court has original jurisdiction, the following categories of circuit court cases are excluded from the guidelines: prayers for jury trials from the District Court in which a pre-sentence investigation (PSI) was not ordered, criminal appeals from the District Court in which a PSI was not ordered, crimes that carry no possible penalty of incarceration, *criminal nonsupport* and *criminal contempt* cases, sentencing hearings in response to a violation of probation, and violations of public local laws and municipal ordinances. Because they generally involve more serious and/or incarcerable offenses, prayers for jury trials and criminal appeals from the District Court in which a PSI is ordered, are defined as guidelines-eligible cases. Reconsiderations for crimes of violence and three-judge panel reviews are also defined as guidelines-eligible cases if there is an adjustment made to the defendant's active sentence. Table 1 provides a complete description of guidelines-eligible and ineligible cases.

---

<sup>1</sup> In 1991, the Sentencing Guidelines Revision Committee of the Advisory Board established 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. Based on this previously adopted policy, the Commission adopted the goal of 65% as the benchmark standard for sentencing guidelines compliance.

**Table 1. Guidelines-Eligible and Ineligible Cases.**

| <b>For Cases Originating in Circuit Court</b>  |  |
|--|--|
| <b>Guidelines-Eligible</b>   | <b>Guidelines-Ineligible</b>   |
| Offenses originally prosecuted in Circuit Court  | Violations of public local laws and municipal ordinances   |
|  | Offenses that carry no possible penalty of incarceration   |
|  | Criminal nonsupport and criminal contempt <sup>2</sup>   |
| All pleas, including American Bar Association (ABA) pleas, nonbinding pleas, and pleas of <i>nolo contendere</i> (no contest) by the offender                        | Cases in which the offender was found not criminally responsible (NCR)   |
| Sentences to probation before judgment (PBJ)   | Sentencing hearings in response to a violation of probation  |
| Initial sentences with a condition of drug court or an inpatient commitment under Health-General Article, Title 8, Subtitle 5, Annotated Code of Maryland            | Sentences with a condition of drug court or an inpatient commitment under Health-General Article, Title 8, Subtitle 5, Annotated Code of Maryland, that result from a violation of probation |
| Reconsiderations for a crime of violence (as defined in Criminal Law Article, § 14-101, Annotated Code of Maryland) if there is an adjustment to the active sentence | Reconsiderations for a crime of violence if there is <u>NOT</u> an adjustment to the active sentence   |
| Three-judge panel reviews if there is an adjustment to the active sentence   | Three-judge panel reviews if there is <u>NOT</u> an adjustment to the active sentence  |
| <b>For Cases Originating in District Court</b>   |  |
| <b>Guidelines-Eligible</b>   | <b>Guidelines-Ineligible</b>   |
| Prayers for a jury trial if a pre-sentence investigation (PSI) is ordered  | Prayers for a jury trial if a PSI is <u>NOT</u> ordered  |
| Appeals from District Court if a PSI is ordered  | Appeals from District Court if a PSI is <u>NOT</u> ordered   |

The sentencing guidelines cover three broad categories of offenses: person, drug, and property. The guidelines recommend whether to incarcerate an offender and if so, provide a recommended sentence length range, based largely on the available data for how Maryland circuit court judges have sentenced similar convictions. For each offense category, a separate matrix contains cells with recommended sentence ranges. Appendix A includes a copy of the three sentencing matrices. The grid cell at the intersection of an individual's offender score and offense seriousness category (for drug and property offenses) or offense score (for person offenses) determines the sentence recommendation. The offense seriousness category is an offense ranking ranging from I to VII, where I designates the most serious criminal offenses and VII designates the least serious criminal offenses. For person offenses, the seriousness category, the physical or mental injury to the victim, the presence of a weapon, and any special vulnerability of the victim (such as being under 11 years old, 65 years or older, or physically or

<sup>2</sup> Guidelines-ineligible effective November 1, 2016.

cognitively impaired) together determine the offense score. The offender score is a measure of the individual's criminal history, determined by whether or not the offender was in the criminal justice system at the time the offense was committed (i.e., on parole, probation, or temporary release from incarceration, such as work release), has a juvenile record or prior criminal record as an adult, and has any prior adult parole or probation violations.

The guidelines sentence range represents only nonsuspended 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) 14.22.01.05A states that the judge shall document the reason or reasons for imposing a sentence outside of the recommended guidelines range.

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## **MSCCSP Background**

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The Maryland General Assembly created the MSCCSP in May 1999, after a study commission (the Maryland Commission on Criminal Sentencing Policy) recommended creating a permanent commission in its final report to the General Assembly. The MSCCSP assumed the functions of the Sentencing Guidelines Advisory Board of the Judicial Conference, initially established in 1979 to develop and implement Maryland's sentencing guidelines. The General Assembly created the MSCCSP to oversee sentencing policy and to maintain and monitor the state's voluntary sentencing guidelines. CP, § 6-202 sets out six goals for the MSCCSP, stating "[t]he General Assembly intends that:

- (1) sentencing should be fair and proportional and that sentencing policies should reduce unwarranted disparity, including any racial disparity, in sentences for criminals who have committed similar crimes and have similar criminal histories;
- (2) sentencing policies should help citizens to understand how long a criminal will be confined;
- (3) sentencing policies should preserve meaningful judicial discretion and sufficient flexibility to allow individualized sentences;
- (4) sentencing guidelines be voluntary;
- (5) the priority for the capacity and use of correctional facilities should be the confinement of violent and career criminals;
- (6) sentencing judges in the State should be able to impose the most appropriate criminal penalties, including corrections options programs for appropriate criminals."

The General Assembly designed and authorized the MSCCSP with the purpose of fulfilling the above legislative intentions. The General Assembly authorized the MSCCSP to "adopt existing sentencing guidelines for sentencing within the limits established by law which shall be

considered by the sentencing court in determining the appropriate sentence for defendants who plead guilty or nolo contendere to, or who were found guilty of crimes in a circuit court” (1999 Md. Laws ch. 648). The MSCCSP also has authority to “adopt guidelines to identify defendants who would be appropriate for participation in corrections options programs” (1999 Md. Laws ch. 648). The sentencing court is to consider these guidelines in selecting either the guidelines sentence for a defendant or sanctions under corrections options.

Pursuant to CP, § 6-210, the MSCCSP collects sentencing guidelines worksheets, monitors sentencing practice, and adopts changes to the sentencing guidelines matrices. The Maryland sentencing guidelines worksheet enables the MSCCSP to collect criminal sentencing data from Maryland state and local agencies involved in criminal sentencing to meet these requirements. Criminal justice practitioners complete worksheets for guidelines-eligible criminal cases prosecuted in circuit court to determine the recommended sentencing outcome and to record sentencing data. Appendix B provides a copy of the current Maryland sentencing guidelines worksheet. The sentencing judges are expected to review worksheets for completeness and accuracy (COMAR 14.22.01.03F(4)). With the exception of worksheets completed via the Maryland Automated Guidelines System (MAGS), the court clerk mails a hard copy to the Commission’s office. The Commission staff is responsible for data entry of non-MAGS worksheets and monitoring all data collected within the sentencing guidelines worksheets. Data collected by the Commission permit analyses of sentencing trends with respect to compliance with the guidelines, particular offenses, specific types of offenders, and geographic variations. The MSCCSP uses the guidelines data to monitor circuit court sentencing practices and when necessary, to adopt changes to the guidelines consistent with legislative intent.

The Commission’s enabling legislation also authorizes the MSCCSP to conduct guidelines training and orientation for criminal justice system participants and other interested parties. Additionally, the MSCCSP administers the guidelines system in consultation with the General Assembly and provides fiscal and statistical information on proposed legislation concerning sentencing and correctional practice.

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## **MSCCSP Structure**

The MSCCSP consists of 19 members, including members of the Judiciary, criminal justice practitioners, members of the Maryland Senate and House of Delegates, as well as public representatives.





MSCCSP Chair, The Honorable  
Glenn T. Harrell, Jr. (Ret.)

Governor Lawrence J. Hogan, Jr. appointed, effective July 1, 2015, the Honorable Glenn T. Harrell, Jr., Judge, Court of Appeals, 4th Appellate Judicial Circuit, Prince George's County (retired), as the chair of the MSCCSP. Other Governor appointees include Paul F. Enzinna, a defense attorney, and Barbara Dorsey Domer, Frederick County Circuit Court Administrator (retired), who serve as the two public representatives on the Commission; Colonel William M. Pallozzi, Secretary of State Police, who serves as the representative from law enforcement; the

Honorable Brian L. DeLeonardo, State's Attorney for Carroll County, who serves as the representative for the Maryland State's Attorneys' Association; LaMonte E. Cooke, Director of Correctional Services for Queen Anne's County, who serves as the local correctional facilities representative; Richard A. Finci, a criminal defense attorney who serves as the representative for the Maryland Criminal Defense Attorneys' Association; the Honorable Laura L. Martin, State's Attorney for Calvert County, who serves as the victims' advocacy group representative; and Dr. Brian D. Johnson, Associate Professor, University of Maryland Department of Criminology and Criminal Justice (CCJS), who serves as the criminal justice/corrections policy expert. Mr. DeLeonardo, replaced the Honorable Joseph I. Cassilly, State's Attorney for Harford County and the Commission's representative of the Maryland State's Attorneys' Association, who served as a member of the MSCCSP from 2009 through 2015.

The Chief Judge of the Court of Appeals of Maryland is responsible for three appointments to the Commission. The judicial appointees are the Honorable James P. Salmon, Judge, Court of Special Appeals, 4th Appellate Judicial Circuit, Prince George's County (retired); the Honorable Patrice E. Lewis, Judge, District Court of Maryland, District 5, Prince George's County; and the Honorable Shannon E. Avery, Judge, Circuit Court for Baltimore City, 8th Judicial Circuit.

The President of the Senate is responsible for two appointments: Senators Delores G. Kelley and Robert G. Cassilly. Senator Cassilly replaced Senator Lisa A. Gladden, who served as a member of the MSCCSP from 2007 through 2015. 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, Brian E. Frosh; the State's Public Defender, Paul B. DeWolfe; and the Secretary of the Department of Public Safety and Correctional Services (DPSCS), Stephen T. Moyer.

Four of the Commissioners participate as members of the Sentencing Guidelines Subcommittee. The Honorable Shannon Avery chairs the Sentencing Guidelines Subcommittee (Guidelines Subcommittee). The other members of the subcommittee include Richard A. Finci, Senator Delores G. Kelley, and Laura L. Martin. Each year, the Guidelines Subcommittee reviews all new and revised offenses created by the General Assembly and provides recommendations to the full Commission for seriousness category classification. Additionally, the Guidelines Subcommittee reviews suggested revisions to the guidelines calculation process and reports to the overall Commission on guidelines compliance data.

The MSCCSP is a state agency within the Executive Branch of Maryland, with its office in College Park. In an effort to allow the Commission to benefit from the shared resources of the



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Criminal Justice  
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University of Maryland, the Commission's staff office was established with guidance from the CCJS Department. The University of Maryland connection reinforces the independent status of the Commission

by ensuring non-partisan review and analyses of sentencing data. The MSCCSP and University of Maryland's relationship is mutually beneficial, as the MSCCSP relies on student interns for a substantial portion of its data entry requirements, while also receiving administrative and information technology support from the University. In return, the University benefits from opportunities for students to develop research and practical skills through internships at the MSCCSP.

## MSCCSP ACTIVITIES IN 2016

The MSCCSP held four meetings in 2016. The meetings occurred on May 10, July 12, September 20, and December 13. In addition, the Commission also held its annual public comments hearing on December 13. The minutes for all Commission meetings are available on the Commission's website ([www.msccsp.org](http://www.msccsp.org)).<sup>3</sup> The following discussion provides a review of the Commission's activities in 2016.

### Review of New and Amended Offenses Passed During the 2016 Legislative Session

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The MSCCSP reviewed new criminal laws from the 2016 Legislative Session to identify new and amended offenses requiring the adoption or modification of seriousness categories. The MSCCSP determines new and revised seriousness categories 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.

#### New Offenses Passed During the 2016 Legislative Session

**Justice Reinvestment Act:** The 2016 Legislative Session resulted in significant new criminal justice laws, most notably the Justice Reinvestment Act (JRA; Chapter 515/Senate Bill 1005). The JRA effects widespread change across multiple areas within the criminal justice system, from pretrial detention through reentry and completion of supervision. Among other matters addressed, the JRA amends or repeals multiple statutory maximum and mandatory minimum penalties and promotes drug treatment rather than incarceration for many defendants. Many provisions of the JRA, including the penalty revisions, are not effective until October 1, 2017. However, given the scope of the penalty revisions, the MSCCSP began review of the JRA penalty revisions at its May 10 meeting and continued the review at its July 12 and September 20 meetings. The Commission voted to adopt or amend the seriousness categories for the new and revised offenses, shown in Table 2, at its September 20 meeting. At the September 20 meeting, the Commission also voted to revise the definition of *corrections options* to align with the JRA's emphasis on substance abuse treatment for defendants convicted of drug possession. In accordance with Criminal Law Article (CR), § 5-601(e), Annotated Code of Maryland (2016 Md. Laws ch. 515, at 138), the MSCCSP's definition of *corrections options* will include a suspended sentence for drug possession for a defendant ordered a substance abuse

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<sup>3</sup> The minutes for the December 13 meeting will be available on the MSCCSP website after the Commission reviews and approves the minutes at its next meeting, scheduled for May 9, 2017.

assessment, therefore deeming the sentence guidelines compliant. The Commission decided to make no changes to the guidelines instructions regarding the application of the subsequent offender enhancement (also known as the “doubling enhancement”) among defendants convicted as a subsequent drug offender under Title 5 of the Criminal Law Article, as the JRA-related revisions to CR, § 5-905 make no substantive changes to the doubling terms of the enhancement.<sup>4</sup> Lastly, at its December 13 meeting, the Commission voted to instruct users completing the sentencing guidelines for drug and theft- and fraud-related offenses with decreased penalties pursuant to the JRA, committed prior to, but sentenced on or after, October 1, 2017, to complete the sentencing guidelines by selecting the revised offense and its corresponding seriousness category and applying its statutory maximum to cap the sentencing guidelines, when applicable. These instructions are consistent with Maryland and federal case law which provide that a defendant is subject to the statutory maximum in effect at the time of sentencing, unless pursuant to ex post facto laws, doing so would result in the defendant receiving a punishment harsher than that in effect at the time the offense was committed.<sup>5</sup>

The MSCCSP published its proposed revisions to the sentencing guidelines on its website after the September 20 meeting. The MSCCSP anticipates promulgating the proposed revisions through COMAR in mid-2017 along with any revisions voted on following a review of new and amended offenses from the 2017 Legislative Session. The MSCCSP anticipates that the proposed revisions will be adopted effective October 1, 2017, coinciding with the effective date of the JRA penalty revisions.

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<sup>4</sup> CR, § 5-905 is referred to in the Maryland Sentencing Guidelines Manual (MSGM) as the “doubling enhancement,” and allows for the calculated guidelines range, as well as the statutory maximum penalty, to be doubled for a defendant convicted as a subsequent drug offender. Currently, a defendant convicted of a subsequent drug crime, under Title 5 of the Criminal Law Article, is subject to a term of imprisonment twice that otherwise authorized, twice the fine otherwise authorized, or both (CR, § 5-905). The JRA limits the application of CR, § 5-905 for a defendant whose prior and subsequent convictions were for a violation of CR, §§ 5-601 through 5-606 to a defendant who was also previously convicted of a crime of violence as defined in CR, § 14-101.

<sup>5</sup> See *Waker v. State of Maryland*, 431 Md. 1 (2011); and the ex post facto laws of both the United States Constitution and Article 17 of the Maryland Declaration of Rights. Consistent with ex post facto laws, users will be instructed to select the offense corresponding to the date the offense was committed for offenses with increased penalties pursuant to the JRA.

**Table 2. Guidelines Offenses and Adopted Seriousness Categories Related to the Justice Reinvestment Act, Effective Date October 1, 2017<sup>6</sup>**

| Annotated Code of Maryland       | Offense   | Current Stat. Max. / Seriousness Category | New Stat. Max. / Seriousness Category |
|----------------------------------|---|---|---------------------------------------|
| CR, § 5-601(c)(1)(i)             | <b>CDS and Paraphernalia</b><br>Possession—non-marijuana, 1 <sup>st</sup> conviction  | 4Y / V                                    | 1Y / VII                              |
| CR, § 5-601(c)(1)(ii)            | <b>CDS and Paraphernalia</b><br>Possession—non-marijuana, 2 <sup>nd</sup> or 3 <sup>rd</sup> conviction   | 4Y / V                                    | 18M / VII                             |
| CR, § 5-601(c)(1)(iii)           | <b>CDS and Paraphernalia</b><br>Possession—non-marijuana, 4 <sup>th</sup> and subsequent convictions  | 4Y / V                                    | 2Y / VII                              |
| CR, § 5-601(c)(2)(i)             | <b>CDS and Paraphernalia</b><br>Possession—marijuana  | 1Y / VII                                  | 6M / VII                              |
| CR, § 5-608(a)<br>CR, § 5-609(a) | <b>CDS and Paraphernalia</b><br>Unlawful distribution, manufacture, etc—narcotics and hallucinogenics (e.g., PCP, heroin, cocaine, LSD, oxycodone, and methadone) | 20Y / IIIB                                | No change <sup>7</sup>                |
| CR, § 5-608(b)<br>CR, § 5-609(b) | <b>CDS and Paraphernalia</b><br>Unlawful distribution, manufacture, etc—narcotics and hallucinogenics, subsequent   | 20Y MM / IIIB                             | 20Y / IIIB                            |
| CR, § 5-608(c)<br>CR, § 5-609(c) | <b>CDS and Paraphernalia</b><br>Unlawful distribution, manufacture, etc—narcotics and hallucinogenics, subsequent   | 25Y MM / IIIB                             | 25Y / IIIB                            |
| CR, § 5-608(d)<br>CR, § 5-609(d) | <b>CDS and Paraphernalia</b><br>Unlawful distribution, manufacture, etc—narcotics and hallucinogenics, subsequent   | 40Y MM / IIIB                             | 40Y / IIIB                            |
| CR, § 5-609(a)                   | <b>CDS and Paraphernalia</b><br>Unlawful distribution, manufacture, etc—MDMA/ecstasy 750 grams or more  | 20Y / IIIA                                | No change <sup>8</sup>                |

<sup>6</sup> Throughout this table, [brackets] indicate removed language, **bold, underlined** font is new language, Y = year, M = month, and MM = non-suspendable mandatory minimum.

<sup>7</sup> The JRA decreases the maximum fine for a violation of CR, § 5-608(a) and CR, § 5-609(a) from \$25,000 and \$20,000, respectively, to \$15,000. The JRA makes no change to the maximum period of incarceration for CR, § 5-608(a) or CR, § 5-609(a). As such, the Commission voted to maintain the offense's current seriousness category.

| Annotated Code of Maryland  | Offense   | Current Stat. Max. / Seriousness Category | New Stat. Max. / Seriousness Category |
|-----------------------------|---|---|---------------------------------------|
| CR, § 5-609(b)              | <b>CDS and Paraphernalia</b><br>Unlawful distribution, manufacture, etc—MDMA/ecstasy 750 grams or more, subsequent  | 20Y MM / IIIA                             | 20Y / IIIA                            |
| CR, § 5-609(c)              | <b>CDS and Paraphernalia</b><br>Unlawful distribution, manufacture, etc—MDMA/ecstasy 750 grams or more, subsequent  | 25Y MM / IIIA                             | 25Y / IIIA                            |
| CR, § 5-609(d)              | <b>CDS and Paraphernalia</b><br>Unlawful distribution, manufacture, etc—MDMA/ecstasy 750 grams or more, subsequent  | 40Y MM / IIIA                             | 40Y / IIIA                            |
| CR, § 5-607(a) <sup>9</sup> | <b>CDS and Paraphernalia</b><br>Unlawful distribution, manufacture, etc—non-narcotics, subsequent   | 5Y/2Y MM / IV                             | 5Y / IV                               |
| CR, § 5-612                 | <b>CDS and Paraphernalia</b><br>Manufacture, distribute, dispense, or possess certain Schedule I or II controlled dangerous substances, large amounts as specified in CR, § 5-612 | 20Y/5Y MM / IIIB                          | No change <sup>10</sup>               |
| CR, § 7-104(g)(1)(iii)      | <b>Theft, Crimes Involving</b><br>Felony theft or theft-scheme, \$100,000 or greater  | 25Y / II                                  | 20Y / III                             |
| CR, § 7-104(g)(1)(ii)       | <b>Theft, Crimes Involving</b><br>Felony theft or theft-scheme, at least [\$10,000] <b>\$25,000</b> but less than \$100,000   | 15Y / IV                                  | 10Y / V                               |
| CR, § 7-104(g)(1)(i)        | <b>Theft, Crimes Involving</b><br>Felony theft or theft-scheme, at least [\$1,000] <b>\$1,500</b> but less than [\$10,000] <b>\$25,000</b>  | 10Y / V                                   | 5Y / VI                               |

<sup>8</sup> The JRA decreases the maximum fine for a violation of CR, § 5-609(a) from \$20,000 to \$15,000. The JRA makes no change to the maximum period of incarceration for CR, § 5-609(a). As such, the Commission voted to maintain the offense's current seriousness category.

<sup>9</sup> Pursuant to the JRA, the two year mandatory minimum for the subsequent unlawful distribution, manufacture, etc. of non-narcotics (CR, § 5-607(b)) is repealed from the laws of Maryland. The current penalty for the unlawful distribution, manufacture, etc. of non-narcotics, outlined in CR, § 5-607(a), will remain in effect on and after October 1, 2017, for both first-time and subsequent offenders. As such, the Commission voted to maintain the offense's current seriousness category.

<sup>10</sup> The JRA increases the amount of crack cocaine to be the same as the amount of powder cocaine that is required to trigger enhanced penalties for defendants convicted under CR, § 5-612 (i.e., 448 grams). Otherwise the penalty for a violation of CR, § 5-612 remains the same. As such, the Commission voted to maintain the offense's current seriousness category.

| Annotated Code of Maryland   | Offense   | Current Stat. Max. / Seriousness Category | New Stat. Max. / Seriousness Category |
|--|---|---|---------------------------------------|
| CR, § 7-104(g)(2)(i)(1)  | <b>Theft, Crimes Involving</b><br>Misdemeanor theft or theft-scheme, <u>at least \$100 but less than [\$1,000] \$1,500</u> , 1 <sup>st</sup> conviction   | 18M / VII                                 | 6M / VII                              |
| CR, § 7-104(g)(2)(i)(2)  | <b>Theft, Crimes Involving</b><br>Misdemeanor theft or theft-scheme, <u>at least \$100 but less than [\$1,000] \$1,500</u> , 2 <sup>nd</sup> and subsequent convictions   | 18M / VII                                 | 1Y / VII                              |
| CR, § 7-104(g)(4)  | <b>Theft, Crimes Involving</b><br>Misdemeanor theft or theft-scheme, less than [\$1,000] <u>\$1,500</u> , [3 <sup>rd</sup> ] <u>5<sup>th</sup></u> and subsequent convictions   | 5Y / VI                                   | No change <sup>11</sup>               |
| CR, § 8-103(b)<br>CR, § 8-106(a)(3) (penalty)                              | <b>Bad Check</b><br>Felony bad check, \$100,000 or greater  | 25Y / V                                   | 20Y / III <sup>12</sup>               |
| CR, § 8-103<br>CR, § 8-106(a)(2) (penalty)                                 | <b>Bad Check</b><br>Felony bad check, at least [\$10,000] <u>\$25,000</u> but less than \$100,000   | 15Y / V                                   | 10Y / V                               |
| CR, § 8-103<br>CR, § 8-106(a)(1) (penalty)                                 | <b>Bad Check</b><br>Felony bad check, at least [\$1,000] <u>\$1,500</u> but less than [\$10,000] <u>\$25,000</u>  | 10Y / V                                   | 5Y / VI                               |
| CR, § 8-103<br>CR, § 8-106(c) (penalty)                                    | <b>Bad Check</b><br>Misdemeanor bad check, <u>at least \$100 but less than [\$1,000] \$1,500</u>  | 18M / VII                                 | 1Y / VII                              |
| CR, § 8-103<br>CR, § 8-106(b) (penalty)                                    | <b>Bad Check</b><br>Multiple bad checks within a 30-day period, each [less than \$1,000] <u>at least \$1,500 but less than \$25,000</u> and totaling [\$1,000 or more] <u>at least \$1,500 but less than \$25,000</u> | 10Y / V                                   | 5Y / VI                               |
| CR, § 8-206(c)(1)(iii)<br>CR, § 8-207(c)(1)(iii)<br>CR, § 8-209(c)(1)(iii) | <b>Credit Card Crimes</b><br>Felony credit card crimes, \$100,000 or greater  | 25Y / V                                   | 20Y / III <sup>13</sup>               |

<sup>11</sup> The JRA increases the dollar amount threshold and number of prior convictions required for conviction as a subsequent offender under CR, § 7-104(g)(4). Otherwise the penalty for a violation of CR, § 7-104(g)(4) remains the same. As such, the Commission voted to maintain the offense's current seriousness category.

<sup>12</sup> To provide consistency with other theft- and fraud-related offenses, the Commission voted to increase the seriousness category for violations of CR, § 8-103(b) and CR, § 8-106(a)(3).

| Annotated Code of Maryland  | Offense   | Current Stat. Max. / Seriousness Category | New Stat. Max. / Seriousness Category |
|---|---|---|---------------------------------------|
| CR, § 8-206(c)(1)(ii)<br>CR, § 8-207(c)(1)(ii)<br>CR, § 8-209(c)(1)(ii) | <b>Credit Card Crimes</b><br>Felony credit card crimes, at least <b>[\$10,000] <u>\$25,000</u></b> but less than \$100,000  | 15Y / V                                   | 10Y / V                               |
| CR, § 8-206(c)(1)(i)<br>CR, § 8-207(c)(1)(i)<br>CR, § 8-209(c)(1)(i)    | <b>Credit Card Crimes</b><br>Felony credit card crimes, at least <b>[\$1,000] <u>\$1,500</u></b> but less than <b>[\$10,000] <u>\$25,000</u></b>  | 10Y / V                                   | 5Y / VI                               |
| CR, § 8-206(c)(2)<br>CR, § 8-207(c)(2)<br>CR, § 8-209(c)(2)             | <b>Credit Card Crimes</b><br>Misdemeanor credit card crimes, <b>at least <u>\$100 but</u></b> less than <b>[\$1,000] <u>\$1,500</u></b>   | 18M / VII                                 | 1Y / VII                              |
| CR, § 8-206(c)(2)<br>CR, § 8-207(c)(2)<br>CR, § 8-209(c)(2)             | <b>Credit Card Crimes</b><br>Misdemeanor credit card crimes, [not exceeding] <b>less than</b> \$100   | 90 days / VII                             | No change <sup>14</sup>               |
| CR, § 8-301(b), (c)<br>CR, § 8-301(g)(1)(iii) (penalty)                 | <b>Identity Fraud</b><br>Possess, obtain personally identifying information or willfully assume the identity of another, benefit \$100,000 or greater   | 25Y / II                                  | 20Y / III                             |
| CR, § 8-301(b), (c)<br>CR, § 8-301(g)(1)(ii) (penalty)                  | <b>Identity Fraud</b><br>Possess, obtain personally identifying information or willfully assume the identity of another, benefit at least <b>[\$10,000] <u>\$25,000</u></b> but less than \$100,000                       | 15Y / IV                                  | 10Y / V                               |
| CR, § 8-301(b), (c)<br>CR, § 8-301(g)(1)(i) (penalty)                   | <b>Identity Fraud</b><br>Possess, obtain personally identifying information or willfully assume the identity of another, benefit at least <b>[\$1,000] <u>\$1,500</u></b> but less than <b>[\$10,000] <u>\$25,000</u></b> | 10Y / V                                   | 5Y / VI                               |

<sup>13</sup> To provide consistency with other theft- and fraud-related offenses, the Commission voted to increase the seriousness category for violations of CR, §§ 8-206(c)(1)(iii), 8-207(c)(1)(iii), and 8-209(c)(1)(iii).

<sup>14</sup> The JRA made minor revisions to the language contained in CR, §§ 8-206(c)(2), 8-207(c)(2), and 8-209(c)(2). Otherwise the penalty for violations of CR, §§ 8-206(c)(2), 8-207(c)(2), and 8-209(c)(2) remains the same. As such, the Commission voted to maintain the offense's current seriousness category.



| Annotated Code of Maryland                            | Offense  | Current Stat. Max. / Seriousness Category | New Stat. Max. / Seriousness Category |
|---|--|---|---------------------------------------|
| CR, § 8-301(b), (c)<br>CR, § 8-301(g)(2) (penalty)    | <b>Identity Fraud</b><br>Possess, obtain personally identifying information or willfully assume the identity of another, benefit <u>at least \$100 but less than [\$1,000] \$1,500</u> | 18M / VII                                 | 1Y / VII                              |
| CR, § 8-301(d)<br>CR, § 8-301(g)(1)(iii) (penalty)    | <b>Identity Fraud</b><br>Use a re-encoder or skimming device for purpose of identity theft, benefit \$100,000 or greater   | 25Y / II                                  | 20Y / III                             |
| CR, § 8-301(d)<br>CR, § 8-301(g)(1)(ii) (penalty)     | <b>Identity Fraud</b><br>Use a re-encoder or skimming device for purpose of identity theft, benefit at least [\$10,000] <u>\$25,000</u> but less than \$100,000                        | 15Y / IV                                  | 10Y / V                               |
| CR, § 8-301(d)<br>CR, § 8-301(g)(1)(i) (penalty)      | <b>Identity Fraud</b><br>Use a re-encoder or skimming device for purpose of identity theft, benefit at least [\$1,000] <u>\$1,500</u> but less than [\$10,000] <u>\$25,000</u>         | 10Y / V                                   | 5Y / VI                               |
| CR, § 8-301(d)<br>CR, § 8-301(g)(2) (penalty)         | <b>Identity Fraud</b><br>Use a re-encoder or skimming device for purpose of identity theft, benefit <u>at least \$100 but less than [\$1,000] \$1,500</u>                              | 18M / VII                                 | 1Y / VII                              |
| CR, § 8-301(g)(3)                                     | <b>Identity Fraud</b><br>Intent to manufacture, distribute, or dispense personally identifying information   | 15Y / V                                   | 10Y / V                               |
| CR, § 8-301(c)(1), (f)<br>CR, § 8-301(g)(4) (penalty) | <b>Identity Fraud</b><br>Falsely represent self as another person  | 18M / VII                                 | 1Y / VII                              |
| CR, § 8-301(b-1)<br>CR, § 8-301(g)(4) (penalty)       | <b>Identity Fraud</b><br>Use an interactive computer service to disclose personal identifying information of an individual in order to annoy, threaten, embarrass, or harass           | 18M / VII                                 | 1Y / VII                              |
| CR, § 8-301(e)<br>CR, § 8-301(g)(4) (penalty)         | <b>Identity Fraud</b><br>Possess, obtain, or help another obtain a re-encoder or skimming device for purpose of identity theft   | 18M / VII                                 | 1Y / VII                              |

| Annotated Code of Maryland   | Offense   | Current Stat. Max. / Seriousness Category | New Stat. Max. / Seriousness Category |
|--|---|---|---------------------------------------|
| CR, § 8-509<br>CR, § 8-510<br>CR, § 8-511<br>CR, § 8-512<br>CR, § 8-513<br>CR, § 8-514<br>CR, § 8-515<br>CR, § 8-516(c)<br>(penalty) | <b>Public Fraud</b><br>State health plan fraud, [\$1,000] <b><u>\$1,500</u></b> or greater  | 5Y / V                                    | No change <sup>15</sup>               |
| CR, § 8-509<br>CR, § 8-510<br>CR, § 8-511<br>CR, § 8-512<br>CR, § 8-513<br>CR, § 8-514<br>CR, § 8-515<br>CR, § 8-516(d)<br>(penalty) | <b>Public Fraud</b><br>State health plan fraud, less than [\$1,000] <b><u>\$1,500</u></b>   | 3Y / VII                                  | No change <sup>16</sup>               |
| CR, § 8-611(c)   | <b>Counterfeiting</b><br>Trademark counterfeiting, [\$1,000] <b><u>\$1,500</u></b> or greater   | 15Y / V                                   | 10Y / V                               |
| CR, § 8-611(d)   | <b>Counterfeiting</b><br>Trademark counterfeiting, less than [\$1,000] <b><u>\$1,500</u></b>  | 18M / VII                                 | 1Y / VII                              |
| CR, § 8-801(c)(1)(iii)   | <b>Fraud, Financial Crimes Against Vulnerable Adults</b><br>Obtain property of vulnerable adult or an individual at least 68 years old by deception, intimidation, or undue influence, \$100,000 or greater   | 25Y / II                                  | 20Y / III                             |
| CR, § 8-801(c)(1)(ii)  | <b>Fraud, Financial Crimes Against Vulnerable Adults</b><br>Obtain property of vulnerable adult or an individual at least 68 years old by deception, intimidation, or undue influence, at least [\$10,000] <b><u>\$25,000</u></b> but less than \$100,000 | 15Y / IV                                  | 10Y / V                               |

<sup>15</sup> The JRA increases the dollar amount threshold for violations of CR, §§ 8-509 through 8-515 and 8-516(c). Otherwise the penalty for violations of CR, §§ 8-509 through 8-515 and 8-516(c) remains the same. As such, the Commission voted to maintain the offense's current seriousness category.

<sup>16</sup> The JRA increases the dollar amount threshold for violations of CR, §§ 8-509 through 8-515 and 8-516(d). Otherwise the penalty for violations of CR, §§ 8-509 through 8-515 and 8-516(d) remains the same. As such, the Commission voted to maintain the offense's current seriousness category.

| Annotated Code of Maryland   | Offense   | Current Stat. Max. / Seriousness Category | New Stat. Max. / Seriousness Category |
|--|---|---|---------------------------------------|
| CR, § 8-801(c)(1)(i)   | <b>Fraud, Financial Crimes Against Vulnerable Adults</b><br>Obtain property of vulnerable adult or an individual at least 68 years old by deception, intimidation, or undue influence, at least <del>[\$1,000]</del> <b>\$1,500</b> but less than <del>[\$10,000]</del> <b>\$25,000</b> | 10Y / V                                   | 5Y / VI                               |
| CR, § 8-801(c)(2)  | <b>Fraud, Financial Crimes Against Vulnerable Adults</b><br>Obtain property of vulnerable adult or an individual at least 68 years old by deception, intimidation, or undue influence, <u>at least \$100 but</u> less than <del>[\$1,000]</del> <b>\$1,500</b>                          | 18M / VII                                 | 1Y / VII                              |
| TR, § 16-303(h)<br>TR, § 16-303(i)<br>TR, § 27-101(gg) (penalty) <sup>17</sup> | <b>Motor Vehicle Offense</b><br>Driving while license is suspended under certain provisions in this or another state  | 2M / Default to VII                       | Fine only / N/A                       |
| CR, § 2-204  | <b>Murder</b><br>2 <sup>nd</sup> degree   | 30Y / II                                  | 40Y / II                              |
| CR, § 2-204  | <b>Murder</b><br>2 <sup>nd</sup> degree, attempted  | 30Y / III                                 | 40Y / III                             |
| CR, § 3-601(b)(2)(iii)   | <b>Abuse and Other Offensive Conduct</b><br>Child Abuse—physical, with death, victim younger than 13 years old  | 40Y / II                                  | Life / I                              |
| CR, § 3-601(b)(2)(ii)  | <b>Abuse and Other Offensive Conduct</b><br>Child Abuse—physical, with death, victim at least 13 years old  | 40Y / II                                  | No change <sup>18</sup>               |
| CR, § 3-601(c)(2)  | <b>Abuse and Other Offensive Conduct</b><br>Child Abuse—physical, with death, previous conviction for child abuse   | 40Y / II                                  | Life / I                              |

<sup>17</sup> Violations of TR, § 16-103 (h) and (i) are not contained in the Guidelines Offense Table as, through September 30, 2016, both offenses have a statutory maximum of one year or less. By MSCCSP rule, any offense with a maximum incarceration penalty of one year or less is automatically assigned a seriousness category VII (COMAR 14.22.01.09B(2)(f)) unless the Commission chooses to adopt a different seriousness category. Violations of TR § 16-103 (h) and (i) sentenced on or after October 1, 2017 will not be guidelines-eligible offenses, as they will carry no possible penalty of incarceration.

<sup>18</sup> Pursuant to the JRA, the statutory maximum for child abuse resulting in death of a victim younger than 13 years old increases from 40 years to life. The statutory maximum for child abuse resulting in death of a victim 13 years or older remains 40 years. As such, the Commission voted to maintain the offense's current seriousness category when the victim is 13 years or older.

| Annotated Code of Maryland | Offense  | Current Stat. Max. / Seriousness Category  | New Stat. Max. / Seriousness Category  |
|----------------------------|--|--|--|
| CR, § 9-802                | <b>Criminal Gang Offenses</b><br>Use of or threat of force to coerce participation or prevent leaving gang   | 2Y / VII   | No change <sup>19</sup>  |
| CR, § 9-803                | <b>Criminal Gang Offenses</b><br>Use of or threat of force to coerce participation or prevent leaving gang in school or within 1,000 feet of school property   | 4Y / VI  | No change <sup>20</sup>  |
| CR, § 9-804(f)(1)(i)       | <b>Criminal Gang Offenses</b><br>Participate as member of criminal gang in commission of crime; <u>in receipt and use or investment, of proceeds of \$10,000 or more from underlying crime in the acquisition of real property or establishment or operation of any enterprise; in acquisition or maintenance of any interest or control of any enterprise or property through an underlying crime</u>                               | 10Y / One category more serious than most serious underlying offense. If no conviction on underlying offense, category=IV  | 15Y / One category more serious than most serious underlying offense. If no conviction on underlying offense, category=IV  |
| CR, § 9-804(f)(1)(ii)      | <b>Criminal Gang Offenses</b><br>Participate as member of criminal gang in commission of crime; <u>in receipt and use or investment, of proceeds of \$10,000 or more from underlying crime in the acquisition of real property or establishment or operation of any enterprise; in acquisition or maintenance of any interest or control of any enterprise or property through an underlying crime</u> —resulting in death of victim | 20Y / One category more serious than most serious underlying offense. If no conviction on underlying offense, category=III | 25Y / One category more serious than most serious underlying offense. If no conviction on underlying offense, category=III |
| CR, § 9-805(b)             | <b>Criminal Gang Offenses</b><br>Organize, supervise, finance, or manage a criminal gang   | 20Y / III  | No change <sup>21</sup>  |

<sup>19</sup> The JRA increases the maximum fine for a violation of CR, § 9-802 from \$1,000 to \$10,000. The JRA makes no change to the maximum period of incarceration for CR, § 9-802. As such, the Commission voted to maintain the offense's current seriousness category.

<sup>20</sup> The JRA increases the maximum fine for a violation of CR, § 9-803 from \$4,000 to \$20,000. The JRA makes no change to the maximum period of incarceration for CR, § 9-803. As such, the Commission voted to maintain the offense's current seriousness category.

<sup>21</sup> The JRA increases the maximum fine for a violation of CR, § 9-805(b) from \$100,000 to \$1,000,000. The JRA makes no change to the maximum period of incarceration for CR, § 9-805(b). As such, the Commission voted to maintain the offense's current seriousness category.

**Additional New Offenses in 2016:** The MSCCSP reviewed additional criminal laws from the 2016 Legislative Session and identified 11 new offenses, effective October 1, 2016, with maximum incarceration penalties of one year or more which required the adoption of seriousness categories. The MSCCSP reviewed the new offenses and voted for their respective seriousness categories, shown in Table 3, at its July 12 meeting. After promulgating the proposed classifications for these offenses through the COMAR review process, the MSCCSP adopted these updates effective November 1, 2016.

**Table 3. Guidelines Offenses and Adopted Seriousness Categories Related to New Offenses, 2016 Legislative Session, Effective Date October 1, 2016**

| Legislation                          | Annotated Code of Maryland | Offense  | Statutory Maximum | Adopted Seriousness Category |
|--------------------------------------|----------------------------|--|-------------------|------------------------------|
| Chapters 456 & 457<br>SB 969/HB 1236 | TR, § 22-419               | <b>Motor Vehicle Offense</b><br>Knowingly sell, offer, install, reinstall, import, misrepresent, etc., a counterfeit, nonfunctional, or no airbag        | 5Y                | VI                           |
| Chapter 478<br>HB 188                | FI, § 2-117                | <b>Surveillance and Other Crimes Against Privacy</b><br>Unauthorized disclosure of information obtained or generated by examining licensed persons, etc. | 2Y                | VI                           |
| Chapter 478<br>HB 188                | FI, § 2-117.1              | <b>Surveillance and Other Crimes Against Privacy</b><br>Unauthorized disclosure of information obtained or generated by examining licensed persons, etc. | 2Y                | VI                           |
| Chapters 517 & 518<br>SB 160/HB 157  | CR, § 2-209(d)(2)          | <b>Manslaughter and Related Crimes</b><br>Manslaughter—by vehicle or vessel, <b>subsequent</b>   | 15Y               | III                          |
| Chapters 517 & 518<br>SB 160/HB 157  | CR, § 2-210(f)(2)          | <b>Manslaughter and Related Crimes</b><br>Criminally negligent manslaughter by vehicle or vessel, <b>subsequent</b>                                      | 5Y                | V                            |
| Chapters 517 & 518<br>SB 160/HB 157  | CR, § 2-503(c)(2)          | <b>Manslaughter and Related Crimes</b><br>Negligent homicide by vehicle or vessel while under the influence of alcohol, <b>subsequent</b>                | 10Y               | IV                           |

| <b>Legislation</b>                  | <b>Annotated Code of Maryland</b>                           | <b>Offense</b>  | <b>Statutory Maximum</b> | <b>Adopted Seriousness Category</b> |
|-------------------------------------|---|---|--------------------------|-------------------------------------|
| Chapters 517 & 518<br>SB 160/HB 157 | CR, § 2-504(c)(2)<br>CR, § 2-505(c)(2)<br>CR, § 2-506(c)(2) | <b>Manslaughter and Related Crimes</b><br>Negligent homicide by vehicle or vessel while impaired by alcohol, drugs, or CDS, <b>subsequent</b>                                 | 5Y                       | V                                   |
| Chapters 517 & 518<br>SB 160/HB 157 | CR, § 3-211(c)(3)(ii)                                       | <b>Assault and Other Bodily Woundings</b><br>Cause a life threatening injury by motor vehicle or vessel while under the influence of alcohol, <b>subsequent</b>               | 5Y                       | V                                   |
| Chapters 517 & 518<br>SB 160/HB 157 | CR, § 3-211(d)(3)(ii)                                       | <b>Assault and Other Bodily Woundings</b><br>Cause a life threatening injury by motor vehicle or vessel while impaired by alcohol, <b>subsequent</b>                          | 5Y                       | V                                   |
| Chapters 517 & 518<br>SB 160/HB 157 | CR, § 3-211(e)(3)(ii)                                       | <b>Assault and Other Bodily Woundings</b><br>Cause a life threatening injury by motor vehicle or vessel while impaired by drugs, <b>subsequent</b>                            | 5Y                       | V                                   |
| Chapters 517 & 518<br>SB 160/HB 157 | CR, § 3-211(f)(4)(ii)                                       | <b>Assault and Other Bodily Woundings</b><br>Cause a life threatening injury by motor vehicle or vessel while impaired by a controlled dangerous substance, <b>subsequent</b> | 5Y                       | V                                   |

The MSCCSP identified an additional five new offenses, effective October 1, 2016, with maximum incarceration penalties of one year or less. By MSCCSP rule, any offense with a maximum incarceration penalty of one year or less is automatically assigned a seriousness category VII (COMAR 14.22.01.09B(2)(f)) unless the Commission chooses to adopt a different seriousness category. The MSCCSP reviewed these five offenses at its July 12 meeting and voted to take no action concerning seriousness categories. Taking no action allowed the default rule to cover the new offenses.

### **Amended Offenses Passed During the 2016 Legislative Session**

The MSCCSP considered amended criminal laws from the 2016 Legislative Session and identified one offense, effective October 1, 2016, which required review due to an increase in its

statutory maximum penalty. Table 4 notes this offense and its revisions. The MSCCSP reviewed this offense and voted for its seriousness category, shown in Table 4, at the July 12 meeting. After promulgating the proposed classification for this offense through the COMAR review process, the MSCCSP adopted the update effective November 1, 2016.

**Table 4. Guidelines Offenses and Adopted Seriousness Categories Related to Amended Offenses, 2016 Legislative Session, Effective Date October 1, 2016**

| Legislation                         | Annotated Code of Maryland | Offense  | Prior Stat. Max. / Seriousness category | New Stat. Max. / Seriousness category |
|-------------------------------------|----------------------------|--|---|---------------------------------------|
| Chapters 199 & 200<br>SB 393/HB 490 | HO, § 8-710                | <b>Fraud, Miscellaneous</b><br>Violate certain provisions of Health Occupations Article, Title 8 (Nurses), Subtitle 7 (Prohibited Acts; Penalties) | 1Y / VII                                | 5Y / VI                               |

The MSCCSP identified an additional twenty amended offenses, effective October 1, 2016<sup>22</sup>, and voted to take no action concerning their seriousness categories at its July 12 meeting, as the legislative amendments involved no change to the offenses' penalty structures.

Nonsubstantive changes to COMAR 14.22.02.02 and the Guidelines Offense Table were nevertheless necessary to reflect minor statutory revisions (e.g., changes to statutory subsection designations). After promulgating those changes through the COMAR review process, the MSCCSP adopted these revisions effective November 1, 2016.

### **Miscellaneous Modifications to the Guidelines Offense Table in 2016**

In its continued review of seriousness categories for all criminal offenses sentenced in the state's circuit courts, the MSCCSP identified ten offenses with maximum incarceration penalties of one year or more not previously classified by the Commission. The Commission reviewed the ten offenses listed in Table 5 during its July 12 meeting and voted for seriousness categories and offense type classifications consistent with those for similar offenses. After promulgating these proposed offense table updates through the COMAR review process, the MSCCSP adopted these revisions effective November 1, 2016.

<sup>22</sup> With the exception of Chapter 41 (SB 724), which was effective July 1, 2016.

**Table 5. Adopted Seriousness Categories for Previously Unclassified Offenses**

| Annotated Code of Maryland | Offense  | Statutory Maximum | Offense Type | Adopted Seriousness category |
|----------------------------|--|-------------------|--------------|------------------------------|
| EL, § 9-312                | <b>Election Offenses</b><br>Violation of any provision of Subtitle 3 (Absentee Voting) of Title 9 (Voting) of Election Law Article | 2 years           | Property     | VII                          |
| EL, § 16-101               | <b>Election Offenses</b><br>Voter registration offenses  | 5 years           | Property     | VII                          |
| EL, § 16-802               | <b>Election Offenses</b><br>Tamper, damage, or prevent correct operation of voting equipment                                       | 3 years           | Property     | VI                           |
| EL, § 16-803               | <b>Election Offenses</b><br>Remove, deface, or destroy equipment or supplies placed in polling place by election officials         | 3 years           | Property     | VI                           |
| EL, § 16-301               | <b>Election Offenses</b><br>Neglect of official duties by election official or official of political party                         | 3 years           | Property     | VII                          |
| EL, § 16-303               | <b>Election Offenses</b><br>Unlawful actions by an election judge  | 2 years           | Property     | VII                          |
| EL, § 16-901               | <b>Election Offenses</b><br>Falsely or fraudulently making, defacing, or destroying a certificate of candidacy or nomination       | 3 years           | Property     | VI                           |
| NR, § 8-738(e)(1)(i)       | <b>Boating Offenses</b><br>Operate a vessel while under the influence of alcohol, 1st offense                                      | 1 year            | Person       | VII                          |
| NR, § 8-738(e)(1)(ii)      | <b>Boating Offenses</b><br>Operate a vessel while under the influence of alcohol, 2 <sup>nd</sup> offense                          | 2 years           | Person       | VI                           |
| NR, § 8-738(e)(1)(iii)     | <b>Boating Offenses</b><br>Operate a vessel while under the influence of alcohol, 3 <sup>rd</sup> or subsequent offense            | 3 years           | Person       | V                            |

### Revisions to the Sentencing Matrix for Drug Offenses

Review of compliance with the guidelines is one of the MSCCSP's primary responsibilities. While overall compliance rates reflect a strong consensus for the guidelines in general, the MSCCSP periodically conducts in-depth reviews by examining compliance within individual cells



of each sentencing matrix (person, drug, and property). The MSCCSP typically undertakes these reviews every three to five years as a cell-by-cell analysis may reveal compliance discrepancies that are masked by analyses at the aggregate level. At its May 2014 meeting, the Commission authorized MSCCSP staff to conduct updated analyses of guidelines compliance for individual sentencing guidelines matrix cells using data from fiscal years 2009 through 2013. The review and corresponding discussion spanned five Commission meetings, concluding in December 2015 with the Commission's vote to approve revisions to the sentencing matrix for seriousness categories IV and V drug offenses (see Image 1).

**Image 1. Revised Sentencing Matrix for Drug Offenses (Rows V and IV),  
Effective July 1, 2016**

**Cell Contents:**  
 Row 1 – Previous range.  
Row 2 – Revised range.

| <i>Offender Score</i>               |                      |                      |                        |                        |                           |                           |                       |                          |
|-------------------------------------|----------------------|----------------------|------------------------|------------------------|---------------------------|---------------------------|-----------------------|--------------------------|
| <i>Offense Seriousness Category</i> | 0                    | 1                    | 2                      | 3                      | 4                         | 5                         | 6                     | 7 or more                |
| <b>V</b>                            | P-6M<br><u>P-1M</u>  | P-12M<br><u>P-6M</u> | 3M-12M<br><u>P-1Y</u>  | 6M-18M<br><u>1M-1Y</u> | 1Y-2Y<br><u>2M-18M</u>    | 1.5Y-2.5Y<br><u>3M-2Y</u> | 2Y-3Y<br><u>4M-3Y</u> | 3Y-4Y<br><u>6M-4Y</u>    |
| <b>IV</b>                           | P-12M<br><u>P-3M</u> | P-18M<br><u>P-9M</u> | 6M-18M<br><u>1M-1Y</u> | 1Y-2Y<br><u>2M-18M</u> | 1.5Y-2.5Y<br><u>3M-2Y</u> | 2Y-3Y<br><u>4M-2.5Y</u>   | 3Y-4Y<br><u>6M-3Y</u> | 3.5Y-10Y<br><u>8M-5Y</u> |

*P=Probation, M=Months, Y=Years*

During 2016, the Commission promulgated the approved revisions to the sentencing matrix for drug offenses through COMAR. The Commission updated MAGS as well the various sentencing guidelines instructional materials, including the Maryland Sentencing Guidelines Manual (MSGM), the MAGS User Manual, and the MSCCSP website, to reflect these revisions and notified practitioners of the revisions. Following promulgation through COMAR, the Commission adopted the revisions to the sentencing matrix for seriousness categories IV and V drug offenses effective July 1, 2016.

### Subcommittee Work

The Commission's Guidelines Subcommittee plays a critical role in reviewing all proposed amendments and updates to the sentencing guidelines. The Guidelines Subcommittee met

prior to each of the 2016 Commission meetings. The Guidelines Subcommittee conducted the initial review and consideration of the classification for the new and amended offenses discussed above, as well as the previously unclassified offenses noted in Table 5. The Guidelines Subcommittee also provided recommendations for the following actions: development of rules for how to apply the guidelines for offenses with reduced penalties, pursuant to the JRA, that are committed prior to, but sentenced on or after, October 1, 2017; revisions to the instructions for the prior adult criminal record score; and exclusion of *criminal nonsupport* and *criminal contempt* as guidelines offenses. Finally, the Guidelines Subcommittee also reviewed a question regarding the prior adult criminal record decay factor and its application among lifetime sex offender registrants. The Guidelines Subcommittee recommended to table this discussion to allow time for additional feedback from the legal community on this issue.

### ***Review of Criminal Nonsupport (Family Law, § 10-203) and Criminal Contempt (Common Law) as Guidelines Offenses***

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Failing to support or deserting a minor child in violation of § 10-203 of the Family Law Article (*criminal nonsupport*) and *criminal contempt*, the latter a common law offense often used to penalize failure to support children, are both criminal offenses and both carry the possibility of one year or more incarceration. As such, the two offenses have historically been included on the Guidelines Offense Table and identified as guidelines offenses. However, with the increased use of MAGS and the MSCCSP's ability to provide and elicit feedback from individual jurisdictions regarding sentencing guidelines worksheet completion, the MSCCSP staff became aware that, due to the unique characteristics of *criminal nonsupport* and *criminal contempt* cases, many jurisdictions were unaware that these two offenses were guidelines offenses. Several jurisdictions indicated that a specially assigned prosecutor handled these cases. Additionally, in some jurisdictions, the specially assigned prosecutors are not located within the State's Attorney's Office and may be unfamiliar with the sentencing guidelines process. Using data obtained from Maryland's Administrative Office of the Courts (AOC), the MSCCSP staff found that *criminal nonsupport* is inconsistently charged as a criminal offense throughout Maryland. MSCCSP staff identified 94 *criminal nonsupport* cases sentenced across only eight of 24 jurisdictions in fiscal year 2015.<sup>23</sup> A guidelines worksheet was submitted for only 32 (34%) of these cases from four jurisdictions. Further adding to confusion among sentencing guidelines users, the instructions for the prior adult criminal record component of the offender score

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<sup>23</sup> *Criminal contempt* offenses could not be distinguished in the data, therefore only *criminal nonsupport* offenses were included in the analysis. The data did not include cases from Montgomery County, Prince George's County, or Baltimore City.

instruct that *criminal nonsupport* and *criminal contempt* (among a list of other relatively minor violations) should not be included when scoring the prior adult criminal record.

Given the inconsistency in the prosecution and treatment of these two offenses, the MSCCSP staff requested that the Guidelines Subcommittee review the status of *criminal nonsupport* and *criminal contempt* as guidelines offenses. At its May 2 meeting, the Guidelines Subcommittee reviewed the issue and recommended that *criminal nonsupport* and *criminal contempt* be excluded as guidelines offenses. Based on this recommendation, at its May 10 meeting, the Commission voted to exclude *criminal nonsupport* and *criminal contempt* cases as guidelines offenses. These changes were promulgated through COMAR and adopted effective November 1, 2016.

### **Revisions to Prior Adult Criminal Record Scoring Instructions**

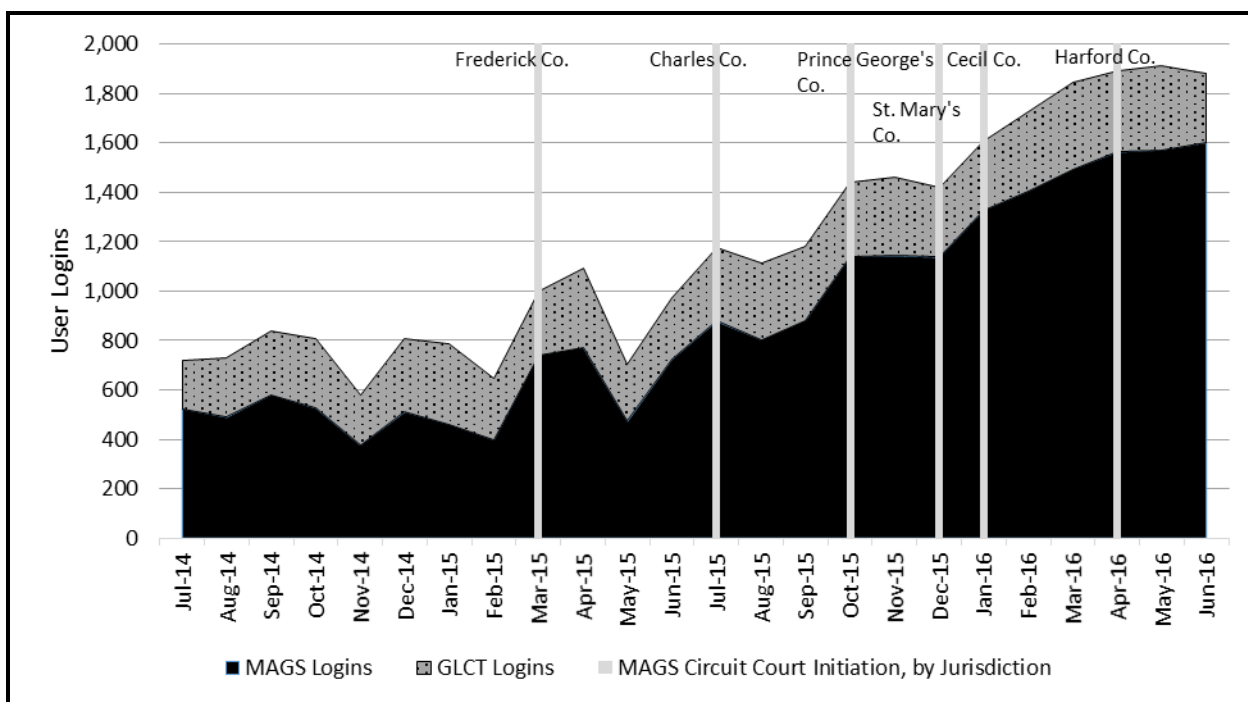
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In light of the many recent and evolving revisions to Maryland law reflecting changing societal views (as understood by the Legislature) concerning drug offenses and the collateral consequences of criminal records, the MSCCSP staff asked the Guidelines Subcommittee to review the scoring instructions for the prior adult criminal record component of the Maryland sentencing guidelines and consider whether revisions were warranted. At its May 2 meeting, the Guidelines Subcommittee reviewed the prior adult criminal record component of the Maryland sentencing guidelines and the MSCCSP staff's proposed amendments. The proposed amendments excluded all adjudications from the prior adult criminal record if the act on which the adjudication was based is no longer a crime OR if the adjudication was expunged from the record or proven by the defense to have been eligible for expungement prior to the date of the instant offense. Additionally, the proposed revisions made minor amendments to the instructions for the criminal record decay factor to make the definition of criminal justice system involvement consistent with that provided in other parts of the offender score. At its May 2 meeting, the Guidelines Subcommittee voted to recommend the revisions to the full Commission. At its May 10 meeting, the Commission voted to adopt amendments excluding all adjudications from the prior adult criminal record if the act on which the adjudication was based is no longer a crime and revising the instructions for the criminal record decay factor. At its July 12 meeting, the Commission voted to adopt amendments excluding all adjudications from the prior adult criminal record if the adjudication was expunged from the record or proven by the defense to have been eligible for expungement as a matter of right prior to the date of the instant offense. These amendments were promulgated through COMAR and adopted effective November 1, 2016.

## Maryland Automated Guidelines System (MAGS)

MAGS is a web-based application that permits electronic completion and submission of sentencing guidelines worksheets. MAGS calculates the appropriate sentencing guidelines range based on the offense and offender characteristics. The automated system was designed to mimic the flow of the paper guidelines worksheet. The State's Attorney's Office, Office of the Attorney General, or a Parole and Probation agent initiates the worksheet in MAGS. Defense attorneys have the ability to view, but not edit the initiated worksheet. MAGS creates a printable PDF of the sentencing guidelines worksheet that can be presented at sentencing. The sentencing judge or his/her designee enters the appropriate sentence information and then electronically submits the completed worksheet and provides a copy to the Clerk's Office for distribution. MAGS provides many benefits in comparison to the paper worksheet process, including the following: simplification of the sentencing guidelines calculation process, reduction in sentencing guidelines calculation errors, improvement in the accuracy and completeness of data, providing for more timely and accurate assessment of sentencing policy and practice, and offering a mechanism to monitor completion and submission of guidelines worksheets.

**Figure 1. MAGS and GLCT User Logins, Fiscal Years 2015 and 2016**



MAGS was first deployed as a pilot project in the Montgomery County Circuit Court (MCCC) in April 2012. Effective January 27, 2014, the Conference of Circuit Judges (CCJ) approved the permanent adoption of MAGS through a gradual roll-out on a jurisdiction-by-jurisdiction basis.

At year-end 2016, MAGS was available for use in 9 of the 24 circuit courts, accounting for approximately 50% of sentencing guidelines worksheets received by the MSCCSP. In fiscal year 2016, approximately 15,000 sentencing guidelines users accessed MAGS, an increase of over 120% from fiscal year 2015 (see Figure 1). An additional 3,700 users accessed the Guidelines Calculator Tool (GLCT) in fiscal year 2016, a slight increase from fiscal year 2015. The GLCT (see Image 2) is a stand-alone tool that anyone can use to calculate sample sentencing guidelines. The GLCT does not require login information, nor does it save or store any of the entered information. As MAGS is initiated in additional jurisdictions, it is expected that use of the GLCT will decrease. However, as Figure 1 displays, users continue to routinely make use of the automated guidelines calculations and worksheets provided by the GLCT. Practitioners in non-MAGS jurisdictions may use the GLCT to calculate and print sentencing guidelines worksheets for submission to the MSCCSP.

**Image 2. Guidelines Calculator Tool (GLCT)**

| Event # | Count | Offense Description  | Guidelines | Case # | Select |
|---------|-------|----------------------|------------|--------|--------|
| 1       | 1     | Burglary, 4th degree | 6M to 1Y   |        |        |

Overall Guidelines Range: 6M To 1Y

MAGS is accessible from the MSCCSP website at: [www.msccsp.org/MAGS](http://www.msccsp.org/MAGS) (see Image 3). The key tasks completed in 2016 to continue the development and deployment of MAGS are summarized below.

Image 3. MAGS page of MSCCSP website



**January 1, 2016:** The Cecil County Circuit Court began use of MAGS to initiate, edit, and submit all official sentencing guidelines worksheets.

**April 1, 2016:** The Harford County Circuit Court began use of MAGS to initiate, edit, and submit all official sentencing guidelines worksheets.

**June 1, 2016:** The MSCCSP released an updated version of MAGS (5.0) for immediate use. MAGS 5.0 provides several new features. The following is a summary of the most significant changes to MAGS.

- The guidelines ranges for seriousness categories IV and V drug offenses were updated to reflect the revised guidelines, effective for cases sentenced on or after July 1, 2016.
- The Guidelines Offense Table and list of most common offenses table now provide the option to search for offense by offense type, in addition to offense description, CJIS code, and source. Users may also simultaneously search all columns in the offense table.
- Several new additional information icons were added to clarify the instructions for various fields on the *Offender Score*, *Offense/Offense Score*, *Sentence*, and *GLS/Overall Sentence* screens.

- Case number format was updated to allow for entry of the new Maryland Electronic Courts (MDEC) case number format.
- Pursuant to the Commission's December 8, 2015 vote, judges, judges' administrative assistants, and law clerks may now view, print, and save PDF versions of submitted worksheets.

**October 1, 2016:** The Baltimore County Circuit Court began use of MAGS to initiate, edit, and submit all official sentencing guidelines worksheets.

**December 2016:** The MSCCSP, in collaboration with the DPSCS and the MCCC, piloted a project to automate the MAGS worksheet tracking process for the MCCC. The project provides select MCCC personnel with access to a daily feed containing the case number, sentence date, disposition type, defendant information (name, date of birth, and state identification number), and worksheet status (submitted or initiated but not submitted) for Montgomery County worksheets initiated and submitted via MAGS. The daily feed may be accessed via a secure FTP site, maintained by the DPSCS and accessible only to the MCCC. The daily feed is anticipated to increase the efficiency of the worksheet tracking process for the Montgomery County coordinators assigned to track MAGS worksheet completion and submission in their jurisdiction and minimize data entry errors in the court's tracking database. In December, the MCCC received access to the secure FTP site and began testing its functionality.

## **Identification of Guidelines-Eligible Sentencing Events**

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To aid in guidelines worksheet submission, in 2014 the MSCCSP staff began working with various state agencies to identify all guidelines-eligible cases sentenced in circuit courts, match these cases to guidelines worksheets received by the MSCCSP, and provide feedback regarding worksheet submission rates to individual jurisdictions, in particular those jurisdictions utilizing MAGS. Each month, the AOC sends the MSCCSP a dataset containing case-level information for all guidelines-eligible cases sentenced in circuit courts during the previous month<sup>24</sup>. The MCCC and, beginning in October 2015, the Prince George's County Circuit Court also send the MSCCSP monthly datasets containing case-level information for all guidelines-eligible cases sentenced in Montgomery and Prince George's Counties, respectively. MSCCSP staff links these datasets to data containing case-level information for all paper and MAGS guidelines worksheets received by the MSCCSP. Using this data, MSCCSP staff calculates

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<sup>24</sup> For a complete description of guidelines-eligible cases, see *The Present Sentencing Guidelines* section of this report, starting at page 2.

worksheet submission rates for each jurisdiction. Jurisdictions using MAGS receive a monthly status report indicating the number of guidelines-eligible cases sentenced in their jurisdiction during the previous month, the number of worksheets submitted via MAGS, and the number of and case information for any worksheets not submitted. Since the MSCCSP began providing individual jurisdictions with feedback regarding their worksheet submission rates in 2014, the worksheet submission rate for Maryland has increased from 75% in fiscal year 2013 to 85% in fiscal year 2016. The MSCCSP anticipates that, in providing individual jurisdictions with feedback, worksheet submission rates will continue to increase thus improving the reliability and accuracy of the MSCCSP's data.

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## **Training and Education**

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The MSCCSP provides sentencing guidelines training and MAGS orientation to promote consistent application of the guidelines and accurate completion of the sentencing guidelines worksheet. On-site guidelines trainings provide a comprehensive overview of the sentencing guidelines calculation process, detailed instructions for completing the offender and offense scores, an explanation of common omissions/mistakes, several examples of more complicated sentencing guidelines scenarios, and a demonstration of the GLCT. The MSCCSP also provides on-site orientation sessions in advance of each jurisdiction's implementation of MAGS. In 2016, the MSCCSP provided 13 guidelines trainings/MAGS orientations attended by approximately 300 total participants, including circuit court judges, judicial staff, prosecutors, public defenders, Parole and Probation agents, and private defense attorneys.

This past year, the MSCCSP Executive Director, Dr. David Soulé, traveled to meet with the circuit court judges in five of Maryland's 24 jurisdictions. The meetings provided an opportunity for the MSCCSP to review sentencing guidelines-related data with the individual jurisdictions, discuss proper sentencing guidelines worksheet completion procedures, and receive feedback from the judges on areas of interest or concern regarding the activities of the MSCCSP. Additionally, the Executive Director provided training for 35 newly-appointed judges at the annual new trial judges' orientation on December 6, 2016.

The MSCCSP also maintains a website ([www.msccsp.org](http://www.msccsp.org)) that it updates regularly to provide materials for criminal justice practitioners regarding the application of the guidelines, including text-searchable and print-friendly copies of the most recent version of the MSGM and the Guidelines Offense Table, a list of offenses with non-suspendable mandatory minimum penalties, a list of offenses that have undergone seriousness category revisions, a sample of

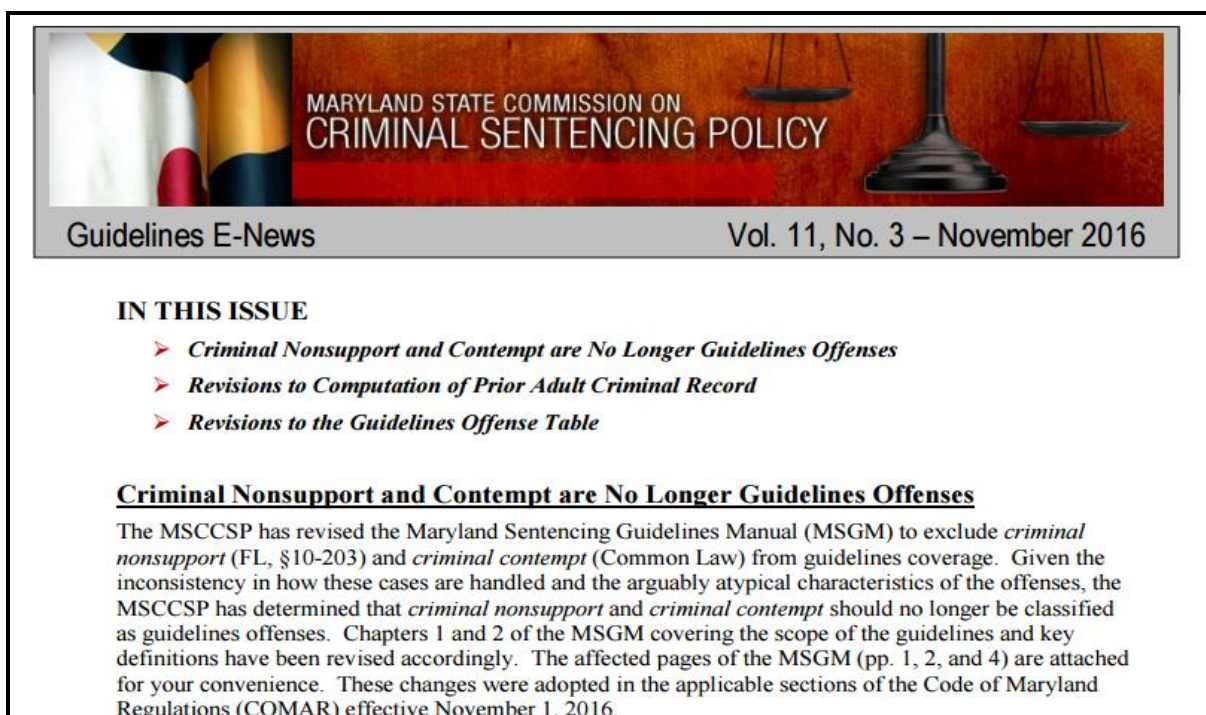


Frequently Asked Questions, reports on sentencing guidelines compliance and average sentences, and other relevant reports. The MSCCSP website also provides minutes from prior Commission meetings and the date, location, and agenda for upcoming meetings. Finally, the MSCCSP website offers links to the MAGS homepage and the GLCT.

In addition to providing training and education programs, the MSCCSP staff is available via phone (301-403-4165) and e-mail ([msccsp@umd.edu](mailto:msccsp@umd.edu)) from 9 a.m. to 5 p.m., Monday through Friday, to provide prompt responses to any questions or concerns regarding the sentencing guidelines or the use of MAGS. The MSCCSP staff regularly responds to questions regarding the guidelines via phone and e-mail. These questions are usually from individuals responsible for completing the guidelines worksheets (i.e., Parole and Probation agents, prosecutors, defense attorneys, and law clerks). Typically, individuals request assistance in locating a specific offense and its respective seriousness category within the Guidelines Offense Table, clarification on the rules for calculating an offender's prior adult criminal record score, or guidance with accessing or navigating MAGS.

In 2016, the MSCCSP continued to deliver timely notice of guidelines-relevant information via the dissemination of the *Guidelines E-News*. The *Guidelines E-News* (see Image 4) is a periodic report delivered electronically to criminal justice practitioners in the state. The *Guidelines E-News* provides information on changes and/or additions to the guidelines and serves as an information source on sentencing policy decisions. For example, the November 2016 issue (Vol. 11, No. 3) highlighted revisions to the instructions for computing the prior adult criminal record score, as well as revisions to the Guidelines Offense Table, and clarified that *criminal nonsupport* and *criminal contempt* were no longer classified as guidelines offenses.

### Image 4. Guidelines E-News, Vol.11, Issue No. 3



## Information, Data Requests, and Outreach

The MSCCSP strives to be a valuable resource for both our criminal justice partners and others interested in sentencing policy. To aid public understanding of the sentencing process in Maryland, the MSCCSP is available to respond to inquiries for information related to sentencing in the state's circuit courts. In 2016, the Commission responded to more than 40 requests for data and/or specific information related to the sentencing guidelines and sentencing trends throughout the state. A variety of individuals, including 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, and media personnel, submit requests for information. The MSCCSP typically responds to requests for data by providing an electronic data file created from the information collected on the sentencing guidelines worksheets. In 2016, the MSCCSP provided sentencing information and/or data to several agencies including, but not limited to, the Governor's Office of Crime Control and Prevention (GOCCP) and the Crime & Justice Institute (to provide supporting information relative to the JRA), the Maryland Crime Victims' Resource Center (to assist the American Civil Liberties Union in support of victims' rights), as well as to several attorneys representing individual clients. Additionally, the MSCCSP completes an annual 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 available on the MSCCSP website. Appendix C provides an abbreviated version of this report.

During the past year, the MSCCSP provided a digital copy of the Guidelines Offense Table to the Office of Forensic Services in the Maryland Department of Health and Mental Hygiene (to assist with updating their own offense-based database). Additionally, the Commission responded to the Maryland Legislature's requests for information to help produce fiscal estimate worksheets for sentencing-related legislation. This is an annual task performed while the General Assembly is in session. In 2016, the Commission provided information for approximately 80 separate bills that proposed modifications to criminal penalties or sentencing/correctional policies.

Finally, the MSCCSP conducts outreach with other criminal justice stakeholders to provide updates on the activities completed by the Commission and also to exchange information, ideas, and experiences on issues related to sentencing policies, guidelines, and other criminal justice related activities. In August 2016, the MSCCSP Executive Director attended the National Association of Sentencing Commissions annual conference to learn more about the work and best practices of other sentencing policy groups. Additionally, the CCJ invited Dr. Soulé to provide an update on the risk assessment feasibility study and MAGS at its March 2016 meeting.

## **Data Collection, Oversight, and Verification**

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The MSCCSP staff is responsible for compiling and maintaining the Maryland sentencing guidelines database, which contains data submitted on the sentencing guidelines worksheets. The MSCCSP staff reviews worksheets as they are received. The staff verifies that the worksheets are completed accurately and in an effort to reduce the likelihood of repeated mistakes, contacts individuals who prepared inaccurate worksheets to discuss detected errors. When possible, the MSCCSP staff resolves detected errors. Once reviewed, trained interns and staff enter the data 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 to maximize the accuracy of the data. These data verification activities typically involve: identifying cases in the database with characteristics likely to have resulted from data entry error, reviewing the sentencing guidelines worksheets for these

cases, and, when necessary, making corrections to the records in the database. 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 allow for increased confidence in the accuracy of the data and permit more reliable offense-specific analyses of the data.

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## **Risk Assessment at Sentencing**

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The study of risk assessment at sentencing in Maryland began in June 2010 at a meeting with the Judiciary Ad Hoc Committee on Sentencing Alternatives, Reentry, and Best Practices, during which the MSCCSP was invited to investigate the possibility of developing a risk assessment instrument to be utilized at sentencing. The MSCCSP subsequently agreed to study the issue further. The risk assessment study proceeded in three phases, beginning in 2011. Phase I of the risk assessment study involved 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, and a review of the risk assessment instruments being utilized by other agencies in Maryland. This phase was completed on May 17, 2011, with the Guidelines Subcommittee's recommendation that, given the work being done in risk assessment by other criminal justice agencies in Maryland as well as in other states, it would make sense for the MSCCSP to proceed to Phase II of the project by examining how risk assessment might be incorporated to augment the sentencing decision, with a focus on the use of risk assessment as a diversion tool for low-risk offenders. The MSCCSP unanimously approved the recommendation of the Guidelines Subcommittee and agreed to seek the funding necessary to begin research on developing or adopting an existing risk instrument to be utilized at sentencing.

In 2014, the CCJS Department at the University of Maryland sought and obtained a grant, awarded by the GOCCP, to work with the MSCCSP to conduct a feasibility study on the potential implementation of a sentencing risk assessment instrument in Maryland, thus initiating Phase II of the risk assessment study. At the September 30, 2014, Commission meeting, the CCJS Department Chair, Dr. James Lynch, presented a [white paper](#) produced as part of the feasibility study to the MSCCSP. The initial white paper described several issues that the Commission would need to deliberate as it considered whether to implement a risk assessment tool at sentencing, and offered a recommendation for each of those issues. In December 2015, Dr. Jinney Smith, Associate Director of the Maryland Data Analysis Center (MDAC) at the

University of Maryland, College Park, presented a follow-up report to address questions that arose during the 2014 presentation. The [2015 follow-up report](#) focused on risk-needs instruments suitable for use at sentencing, the measurement of recidivism, conditions in Maryland that may affect the adoption of any assessment tool, and, finally, a description of some practical issues involved in the implementation of an assessment tool. The Commissioners and an advisory group of five circuit court judges provided feedback on the follow-up paper at the December 8, 2015, meeting. Both of the risk assessment feasibility reports are available on the MSCCSP website at the links highlighted above.

In 2016, the Commission addressed Phase III of the risk assessment study, which involved a review of the Commission's previous work and a decision as to the Commission's next steps. At its May 10 meeting, the Commission was presented with a summary of Phases I and II of the risk assessment study as well as a decision map outlining four options the Commission could select from to determine the next steps to take with regards to risk assessment at sentencing. Option 1 involved maintaining the current system of sentencing, with no risk assessment implementation; Option 2 involved waiting to make a final decision involving the risk assessment until a future date at which point the efficacy of assessments being implemented in other state agencies could be evaluated and, potentially, incorporated into sentencing; Option 3 involved seeking funding to conduct an offender score validation study; and Option 4 involved proceeding with the development of a risk assessment tool for use at sentencing in Maryland. At its July 12 meeting, the Commission voted for Option 2. The Commission agreed that, in light of the various assessments that the DPSCS is implementing pursuant to the JRA, it would make sense for the Commission to wait and consider some version of one of the assessment instruments deployed by DPSCS after sufficient time has passed to allow for evaluation of the various instruments.

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## **Juvenile Delinquency Score Project**

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Juvenile delinquency is a key component in calculating a defendant's offender score. Included in the juvenile delinquency score is a determination as to whether the defendant has ever been committed to state custody. At the Commission's 2012 public comments hearing, an assistant public defender expressed concerns regarding purportedly inconsistent application of the term "commitment to state custody." Juvenile records throughout the state, he asserted, use the term to indicate various different types of punishment. The commenter stated that in one locale in Maryland, "commitment to state custody" might indicate that a judge ordered a juvenile to a secure detention facility. In another area, the same term might indicate that a court assigned in-

home treatment services to the juvenile. These two juvenile punishments are very different and carry different implications concerning the judgment of the juvenile court. However, since both punishments are “commitment to state custody,” judges in separate jurisdictions may not account for the distinctions in use when considering a person’s juvenile record during an adult sentencing hearing. Inconsistent use could have unintended consequences on the calculation of an offender score, thereby affecting the guidelines and the sentence imposed.

In light of those concerns, the MSCCSP agreed to examine empirically how juvenile records affect the sentencing guidelines and which aspects of a juvenile record in Maryland predict later adult offending. The MSCCSP is collaborating with the MDAC at the University of Maryland, College Park on this project. The University of Maryland’s Institutional Review Board approved the research in May 2015. Subsequently, the MDAC submitted applications to Maryland’s Department of Juvenile Services (DJS) and the DPSCS for access to juvenile data and adult recidivism data, respectively. Both the DPSCS and DJS approved the applications. MDAC received the adult recidivism data in 2015 and the juvenile data in early 2016.

The project has proceeded in three phases. At the July 12 meeting, Dr. Jinney Smith presented the results of Phase I of the study, which involved preliminary analyses of the juvenile delinquency score based on the MSCCSP’s sentencing guidelines worksheet data. These analyses provided descriptive statistics for the juvenile delinquency score and sentencing outcomes for various subgroups of offenders. At the December 13 meeting, Dr. Smith presented the results of Phase II of the study, which involved validity analyses of the juvenile delinquency score based on a merge of the sentencing guidelines worksheet data with the juvenile record and adult recidivism data. In 2017, the Commission anticipates that the MDAC will conclude Phase III of the juvenile delinquency score project, which involves a complete merge of the three databases, and the Commission will consider recommendations concerning the maintenance of or revisions to the juvenile delinquency component of the offender score.

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### **Additional Activities Related to Justice Reinvestment Act**

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In addition to its extensive penalty revisions, the JRA has two direct impacts on the MSCCSP: (1) the MSCCSP’s collaboration with the Justice Reinvestment Oversight Board (JROB), and (2) the MSCCSP’s mandate to conduct a study on alternatives to incarceration.

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## **Justice Reinvestment Oversight Board**

The JRA created Subtitle 32 of the State Finances and Procurement Article, which provides for the creation of the JROB. The JROB is a part of the GOCCP and consists of representatives from the executive, legislative, and judicial branches, as well as the DPSCS, the law enforcement community, the State's Attorney's Association, and other state and local agencies. Among its official duties, the JRA provides that the JROB shall collaborate with various state agencies, including the MSCCSP, to create performance measures to track and assess the outcomes of the laws related to the recommendations of the Justice Reinvestment Coordinating Council. Additionally, Subtitle 32 of the State Finances and Procurement Article provides that the MSCCSP, along with other relevant state agencies, shall, semiannually collect and report to the JROB data, disaggregated by race and ethnicity, related to, among other variables, sentence length, inmate admission to local and state correctional facilities, time served, community supervision, recidivism, and restitution ordered. The MSCCSP anticipates it will begin collaboration with and data reporting to the JROB in 2017.

## **Study on Alternatives to Incarceration**

Section 8 of the JRA (2016 Md. Laws Ch. 515, at 201) provides that the Commission shall study how more alternatives to incarceration may be included in the sentencing guidelines and submit a report of its findings and recommendations to the JROB, the Governor, and the General Assembly on or before January 1, 2018. During 2016, the Commission began work on the study on alternatives to incarceration. At the July 12 meeting, MSCCSP staff presented a study proposal and gathered feedback from Commissioners regarding the focus of the study and the types of alternatives to incarceration to examine. The Commission agreed to focus the study on four main areas, including the history and current state of corrections options and sentencing guidelines in Maryland, an inventory of alternatives to incarceration available to circuit court judges in Maryland, alternatives to incarceration available in other states and the Federal system, and recommendations for next steps. In October 2016, the Commission, in collaboration with researchers at Maryland's AOC, administered a survey to select Maryland circuit court judges, local correctional administrators, and Parole and Probation supervisors requesting an inventory of available alternatives to incarceration in their jurisdictions. At its December 13 meeting, the Commission voted to assign the Guidelines Subcommittee and special guests, Commissioner Lamonte Cooke and the Secretary of the DPSCS's representative, Rachel Sessa, the task of developing and reviewing proposed study recommendations prior to presenting them to the full Commission. In 2017, the Guidelines Subcommittee and its guest members will review the survey findings and information collected from other states and the Federal system, develop recommendations based on these findings,

and present its recommendations to the Commission. It is anticipated that a draft of the final report will be presented to the Commission in mid-2017. The final report will be submitted to the JROB, the Governor, and the General Assembly on or before January 1, 2018.

## **Public Comments Hearing**

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The MSCCSP recognizes the importance of providing a forum for the public to discuss sentencing-related issues. To this end, the MSCCSP holds an annual public comments hearing. The 2016 public comments hearing occurred on December 13. The MSCCSP sent an invitation to the hearing to various key stakeholders throughout the state, and announced the hearing on the Commission's website, the Maryland Register, the Maryland General Assembly's hearing schedule, and through a press release by the DPSCS. The MSCCSP appreciates the testimony provided by members of the public, as it believes that the public's participation is essential to creating awareness of sentencing issues.

During the 2016 public comments hearing, one individual testified. [REDACTED], Maryland resident, expressed his concerns regarding economic disparity in sentencing, the Office of the Public Defender's workload, plea bargaining practices, and inmate reentry services. Additionally, one individual, [REDACTED], submitted written testimony prior to the public comments hearing, a copy of which was provided to Commissioners before the public comments hearing. [REDACTED] expressed his views concerning parole for individuals sentenced to life with the possibility of parole.

The minutes for the public comments hearing contain a detailed account of each individual's testimony and a copy of their written statements. The minutes will be available on the MSCCSP website after the Commission reviews and approves the minutes at its next meeting, scheduled for May 9, 2017.



## SENTENCES REPORTED IN FY 2016

The MSCCSP is responsible for collecting sentencing guidelines worksheets and automating the information to monitor sentencing practice and, as warranted, adopting any changes to the sentencing guidelines matrices. From July 1983 through June 2000, the AOC compiled the sentencing guidelines worksheet data. Beginning in July 2000, the MSCCSP assumed this responsibility. Since that time, the MSCCSP has continued to update the data and check for errors. In the process, MSCCSP staff has made corrections to the database and obtained and incorporated additional sentencing guidelines worksheets, which may affect the overall totals reported in previous reports. The data and figures presented in this report reflect only guidelines-eligible cases where the MSCCSP received a sentencing guidelines worksheet.

### Sentencing Guidelines Worksheets Received

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In fiscal year 2016, the MSCCSP received sentencing guidelines worksheets for 10,352 sentencing events.<sup>25</sup> The circuit courts in Calvert, Cecil, Charles, Frederick, Harford, Montgomery, Prince George's, and St. Mary's Counties electronically submitted sentencing guidelines worksheets for 3,081 of the 10,352 sentencing events using MAGS. The remaining sentencing guidelines worksheets were submitted by mail to the MSCCSP office. Table 6 illustrates the number and percentage of sentencing guidelines worksheets submitted in fiscal year 2016 by circuit. Image 5 identifies the individual jurisdictions in each judicial circuit. The Eighth Circuit (Baltimore City) submitted the largest number of sentencing guidelines worksheets (2,214), while the Fourth Circuit (Allegany, Garrett, and Washington Counties) submitted the fewest (525).

In fiscal year 2016, the MSCCSP staff, in combination with staff at the AOC and the MCCC, identified 13,565 guidelines-eligible cases and received a paper worksheet or MAGS submission for 11,507 (84.8%) of the guidelines-eligible cases (see the section *The Present Sentencing Guidelines* of this report for a complete definition of guidelines-eligible cases).<sup>26</sup> Table 6 provides a breakdown of the percentage of guidelines-eligible cases with a worksheet

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<sup>25</sup> A sentencing event will include multiple sentencing guidelines worksheets if the offender is being sentenced for more than three offenses and/or multiple criminal events. Sentencing guidelines worksheet totals throughout this report treat multiple worksheets for a single sentencing event as one worksheet.

<sup>26</sup> Whereas the majority of this section refers to worksheets or sentencing events, which may consist of several case numbers, a guidelines-eligible case is defined as one unique case number. Because case numbers, rather than sentencing events, are used to compute the number of guidelines-eligible cases, the number of guidelines-eligible cases received is greater than the total number of worksheets received in fiscal year 2016.

submitted in fiscal year 2016 by circuit. Worksheet submission rates ranged from 76.8% to 95.8% for individual circuits. However, there is variability in worksheet submission rates when looking at individual jurisdictions within each circuit. In general, jurisdictions utilizing MAGS have higher submission rates. The MSCCSP anticipates that worksheet submission rates will increase as more jurisdictions implement MAGS.

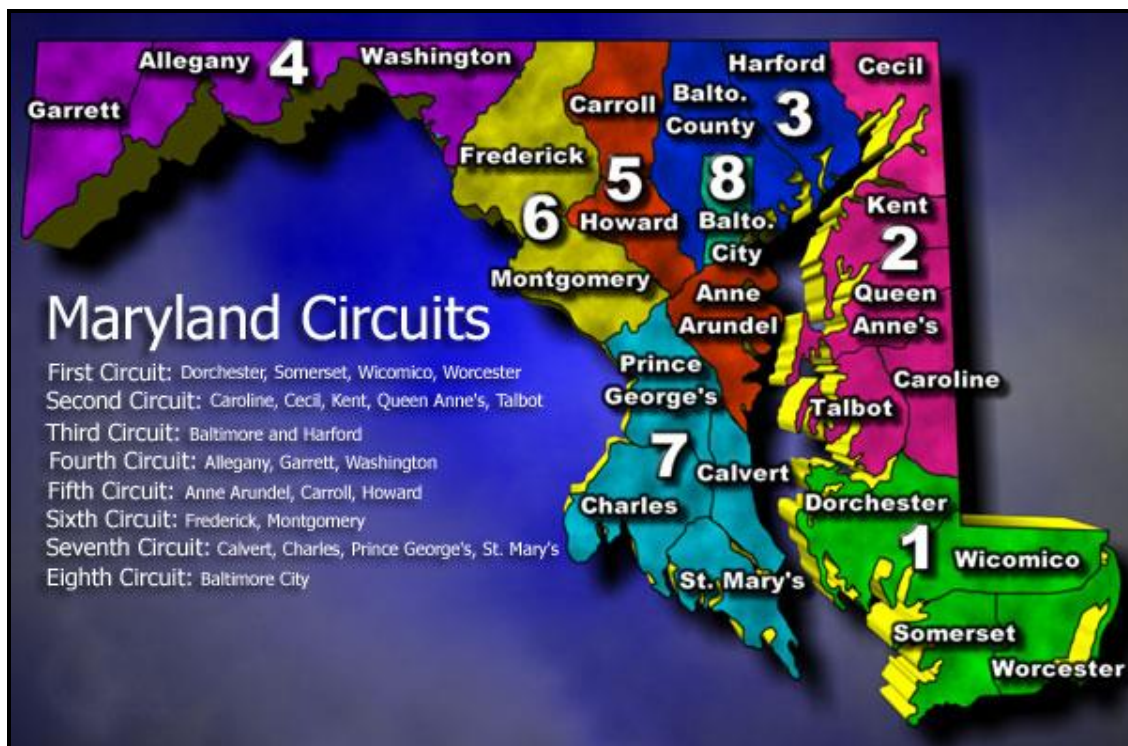
**Table 6. Number and Percentage of Sentencing Guidelines Worksheets Submitted by Circuit, Fiscal Year 2016**

| <b>Circuit</b> | <b>Number of Worksheets Submitted</b> | <b>Percent of Total Worksheets Submitted<sup>27</sup></b> | <b>Percent of Guidelines-Eligible Cases with Submitted Worksheet<sup>28</sup></b> |
|----------------|---------------------------------------|---|---|
| 1              | 723                                   | 7.0%  | 85.5%   |
| 2              | 629                                   | 6.1%  | 86.8%   |
| 3              | 1,840                                 | 17.8%   | 76.8%   |
| 4              | 525                                   | 5.1%  | 92.3%   |
| 5              | 1,265                                 | 12.2%   | 89.1%   |
| 6              | 1,298                                 | 12.5%   | 95.8%   |
| 7              | 1,858                                 | 17.9%   | 83.2%   |
| 8              | 2,214                                 | 21.4%   | 83.0%   |
| <b>TOTAL</b>   | <b>10,352</b>                         | <b>100.0%</b>   | <b>84.8%</b>  |

<sup>27</sup> Percentages may not total 100% due to rounding.

<sup>28</sup> Guidelines-eligible cases in Montgomery County were identified by the MCCC using data from their case management system. Eligible cases in Prince George's County and Baltimore City were identified by the AOC using mainframe data. Eligible cases in all other jurisdictions were obtained from data from the AOC using data entered into the Uniform Court System (UCS).

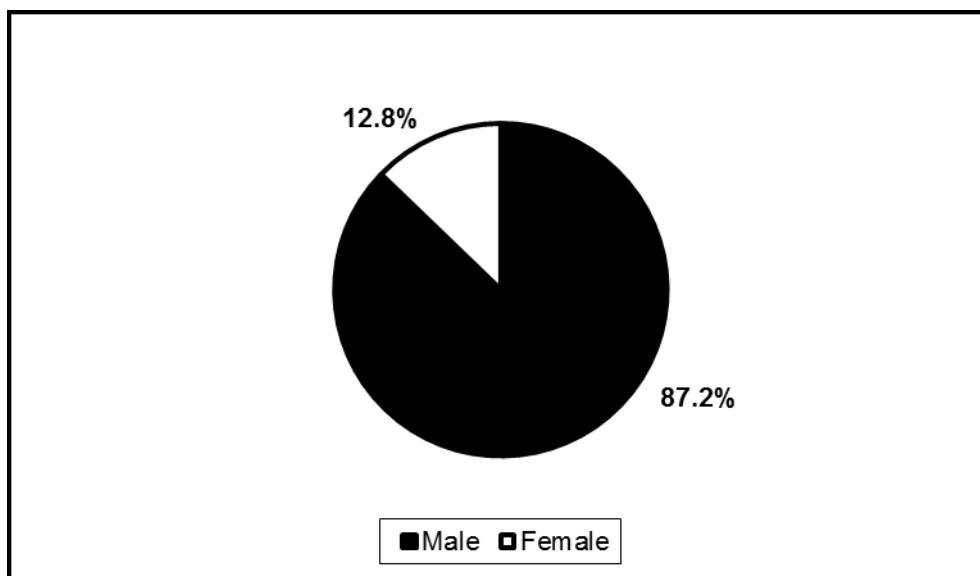
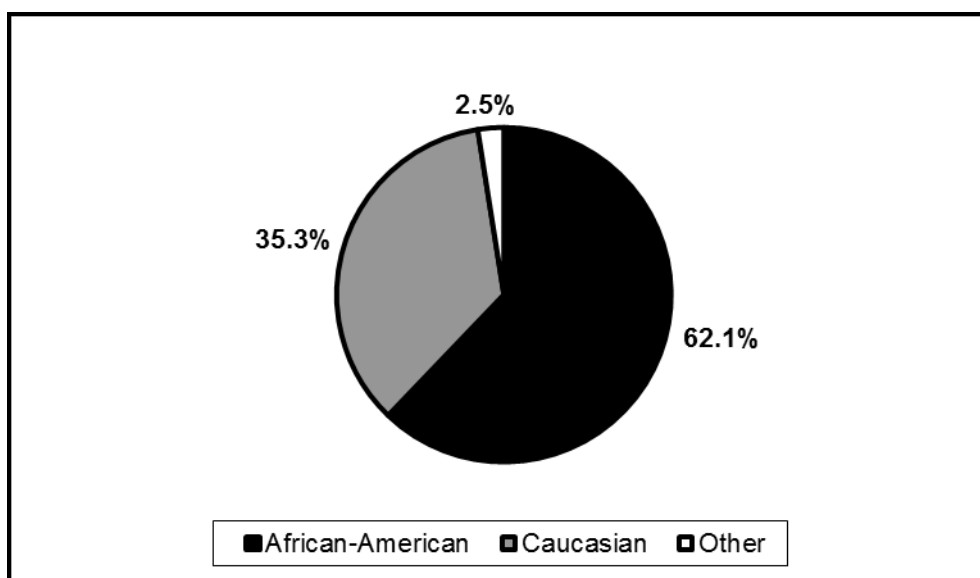
Image 5. Maryland Judicial Circuits

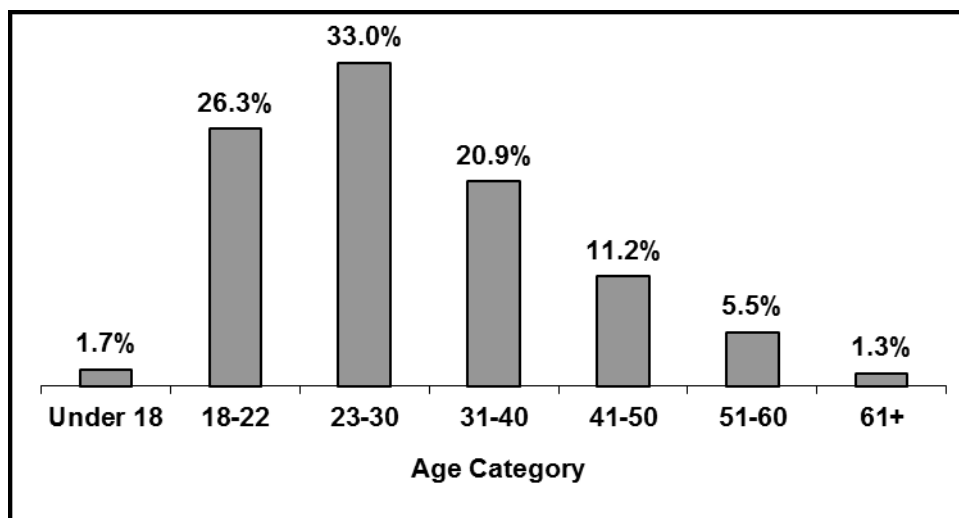


Source: <http://www.courts.state.md.us/clerks/circuitmap2.jpg> (extracted December 2010)

## Guidelines Case Characteristics

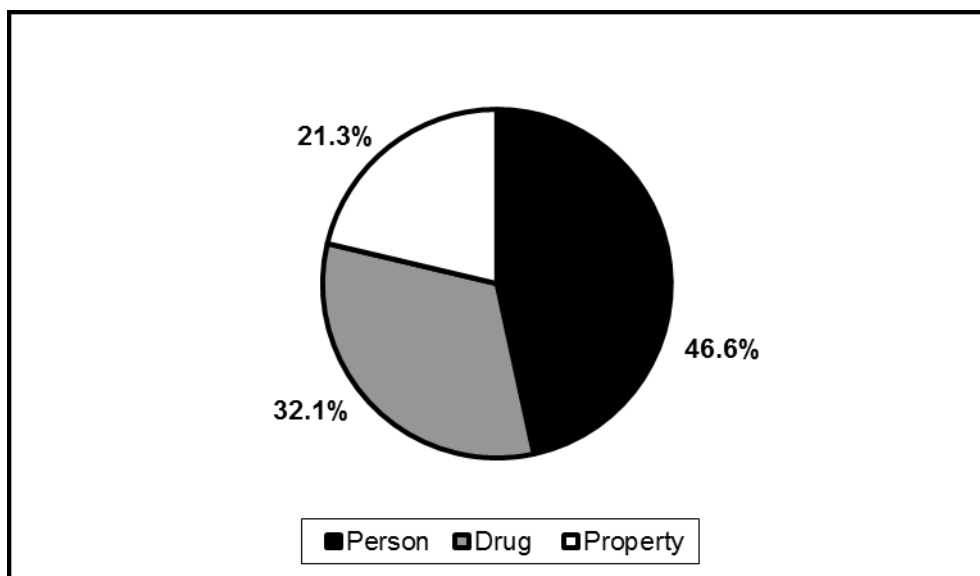
Figures 2 through 4 summarize the descriptive characteristics from the 10,352 sentencing guidelines worksheets submitted for offenders sentenced in fiscal year 2016. Most were male (87.2%) and African-American (62.1%). The median age of offenders at date of offense was 27 years. The youngest offender was 13, while the oldest was 88 years of age. Approximately 2% of offenders were under 18 years of age; 26% were 18-22 years old; 33% were 23-30 years old; 21% were 31-40 years old; and the remaining 18% were 41 years or older.

**Figure 2. Distribution of Guidelines Cases by Gender of Offender, Fiscal Year 2016****Figure 3. Distribution of Guidelines Cases by Race of Offender, Fiscal Year 2016**

**Figure 4. Distribution of Guidelines Cases by Age of Offender, Fiscal Year 2016**

Figures 5 through 9 and Tables 7 through 8 show the distribution of cases by crime category, seriousness category, components of the offender score, components of the offense score, disposition type, and sentence type. Note that the total number of cases from which the figures and corresponding percentages derive excludes reconsiderations and three-judge panel reviews (N=43). Figure 5 provides a breakdown of cases by crime category. For cases involving multiple offenses, the figure considers only the most serious offense. Cases involving a person offense were most common (46.6%), followed by drug cases (32.1%). In 21.3% of cases, the most serious offense was a property crime. The distribution of cases by crime category was similar when limiting the analysis to defendants sentenced to incarceration (49.3% person, 29.9% drug, 20.8% property).<sup>29</sup>

<sup>29</sup> Incarceration includes home detention and credited time, as well as post-sentence jail/prison time.

**Figure 5. Distribution of Guidelines Cases by Crime Category, Fiscal Year 2016**

Figures 6a, 6b, and 6c display the distribution of cases by offense seriousness category for each of the three crime categories. In cases involving a person offense, offenses with a seriousness category V were most common (31.4%), followed by offenses with a seriousness category III (24.6%). *Second degree assault* was the most frequently occurring category V offense, and *robbery with a dangerous weapon* was the most frequently occurring category III offense.

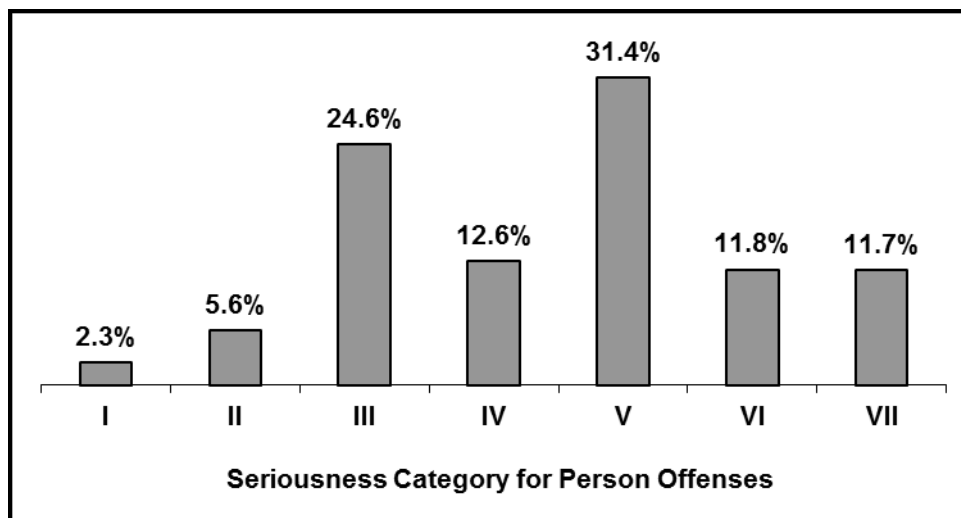
**Figure 6a. Distribution of Person Offenses by Seriousness Category, Fiscal Year 2016**

Figure 6b summarizes the distribution of drug offenses by seriousness category. Nearly three-fourths of drug cases involved an offense with either a seriousness category IIIB (50.6%) or a seriousness category IV (23.5%). *Distribution of heroin* and *distribution of cocaine* were the

most frequently occurring category IIIB offenses, while *distribution of marijuana* was the most frequently occurring category IV offense. Note that there are currently no seriousness category VI drug offenses.

**Figure 6b. Distribution of Drug Offenses by Seriousness Category, Fiscal Year 2016**

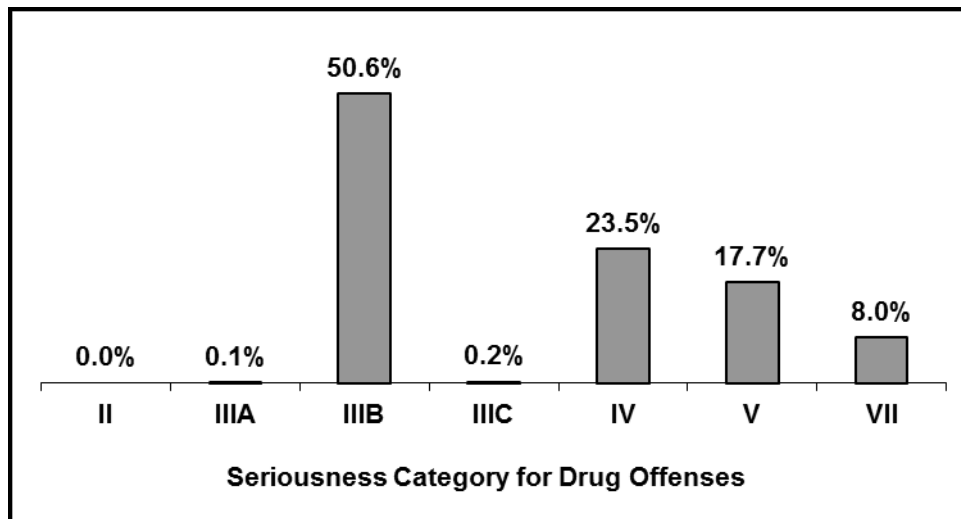


Figure 6c provides the distribution of offenses by seriousness category for property cases. Offenses with a seriousness category II (0.8%) or VI (5.9%) were far less frequent than offenses in the remaining seriousness categories. The most common property offenses included *first degree burglary* (III), *second degree burglary* (IV), *theft or theft scheme of at least \$1,000 but less than \$10,000* (V), and *theft or theft scheme of less than \$1,000 and fourth degree burglary* (VII).

**Figure 6c. Distribution of Property Offenses by Seriousness Category, Fiscal Year 2016**

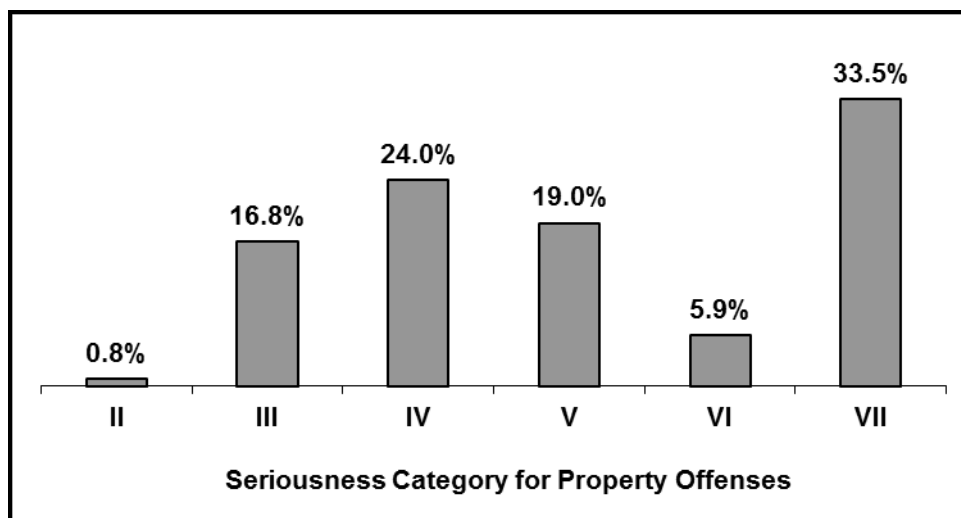


Table 7 shows the distribution of cases by the four components of the offender score. The offender score provides a measure of the defendant's prior criminal history and ranges from 0 to 9. Table 8 displays the distribution of person offenses by the four components of the offense score. The offense score provides a measure of the seriousness of an offense against a person and ranges from 1 to 15. The sentencing matrix grid cell at the intersection of an individual's offender score and offense seriousness category (for drug and property offenses) or offense score (for person offenses) determines the individual's sentence recommendation.<sup>30</sup>

**Table 7. Distribution of Guidelines Cases by Offender Score, Fiscal Year 2016**

| Offender Score Component                  |   | Percent of Offenders |
|---|---|----------------------|
| Relationship to CJS When Offense Occurred | 0 = None or pending cases   | 74.3%                |
|   | 1 = Court or other criminal justice supervision   | 25.7%                |
| Juvenile Delinquency                      | 0 = 23 years or older <b>or</b> crime-free for 5 years <b>or</b> no more than 1 finding of a delinquent act | 93.9%                |
|   | 1 = Under 23 years old <b>and</b> : 2 or more findings of a delinquent act <b>or</b> 1 commitment           | 4.3%                 |
|   | 2 = Under 23 years <b>and</b> committed 2 or more times   | 1.8%                 |
| Prior Adult Criminal Record <sup>31</sup> | 0 = None  | 31.3%                |
|   | 1 = Minor   | 23.0%                |
|   | 3 = Moderate  | 22.1%                |
|   | 5 = Major   | 23.6%                |
| Prior Adult Parole/ Probation Violation   | 0 = No  | 72.4%                |
|   | 1 = Yes   | 27.6%                |
| AVERAGE TOTAL OFFENDER SCORE = 2.68       |   |                      |

<sup>30</sup> For a further description of offender and offense scores, see *The Present Sentencing Guidelines* section of this report, starting at page 2.

<sup>31</sup> If an offender has lived in the community for at least ten years prior to the instant offense without criminal justice system involvement resulting from an adjudication of guilt or a plea of nolo contendere, the MSGM instructs that the prior adult criminal record shall be reduced by one level: from Major to Moderate, from Moderate to Minor, or from Minor to None. This is referred to as the criminal record decay factor. While the application of the decay factor is not typically recorded on the paper worksheet, it is captured in MAGS. The MAGS data indicate that the criminal record decay factor was applied in 1.4% of electronic guidelines worksheets in fiscal year 2016.



The second column of Table 7 details the point values for each of the components of the offender score. The average offender score in fiscal year 2016 was 2.68. Approximately three-quarters of offenders had no relationship to the criminal justice system when the instant offense occurred (74.3%). Similarly, 72.4% had no prior adult parole or probation violations, and only 6.1% had findings of juvenile delinquency. Greater variability was observed for the prior adult criminal record component of the offender score, with nearly one-third of offenders with no record and the remaining offenders divided equally among the minor, moderate, and major prior adult criminal record categories.

**Table 8. Distribution of Person Offenses by Offense Score, Fiscal Year 2016**

| Offense Score Component            |                               | Percent of Offenders |
|------------------------------------|-------------------------------|----------------------|
| Seriousness Category               | 1 = V – VII                   | 54.4%                |
|                                    | 3 = IV                        | 13.0%                |
|                                    | 5 = III                       | 24.4%                |
|                                    | 8 = II                        | 6.0%                 |
|                                    | 10 = I                        | 2.3%                 |
| Victim Injury                      | 0 = No injury                 | 60.3%                |
|                                    | 1 = Injury, non-permanent     | 27.9%                |
|                                    | 2 = Permanent injury or death | 11.9%                |
| Weapon Presence                    | 0 = No weapon                 | 41.0%                |
|                                    | 1 = Weapon other than firearm | 20.6%                |
|                                    | 2 = Firearm or explosive      | 38.5%                |
| Special Victim Vulnerability       | 0 = No                        | 91.1%                |
|                                    | 1 = Yes                       | 8.9%                 |
| AVERAGE TOTAL OFFENSE SCORE = 4.43 |                               |                      |

The second column of Table 8 details the point values for each of the components of the offense score for person offenses. The average offense score for person offenses in fiscal year 2016 was 4.43. More than half of all person offenses had a seriousness category of V, VI, or VII. Approximately 60% of offenses involved no injury to the victim, and 41% involved no

weapon. Finally, fewer than 10% of person offenses were committed against vulnerable victims (defined as those under 11 years old, 65 years or older, or physically or cognitively impaired).

Figure 7 shows the distribution of cases by disposition type (Appendix D contains a description of the seven major disposition types listed on the sentencing guidelines worksheet). The vast majority of cases were resolved by either an ABA plea agreement<sup>32</sup> (42.9%) or a non-ABA plea agreement (38.9%). An additional 12.8% were resolved by a plea with no agreement, and 5.4% of cases were resolved by either a bench or jury trial (.8% and 4.6%, respectively). Roughly 10% of worksheets were missing disposition type.<sup>33</sup> Since disposition type is a required field in the MAGS application, collection of this information is expected to increase as the number of jurisdictions using MAGS increases.

**Figure 7. Distribution of Guidelines Cases by Disposition, Fiscal Year 2016**

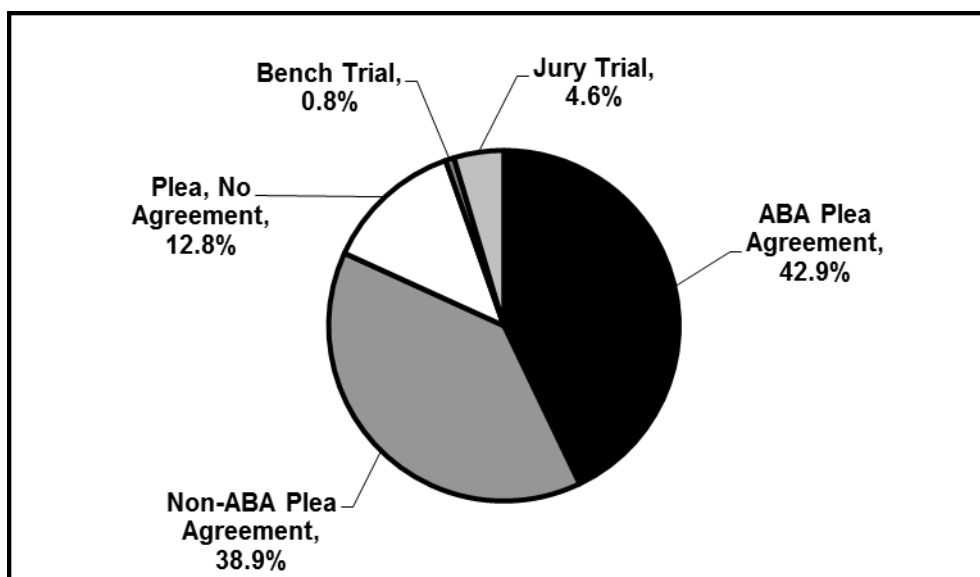
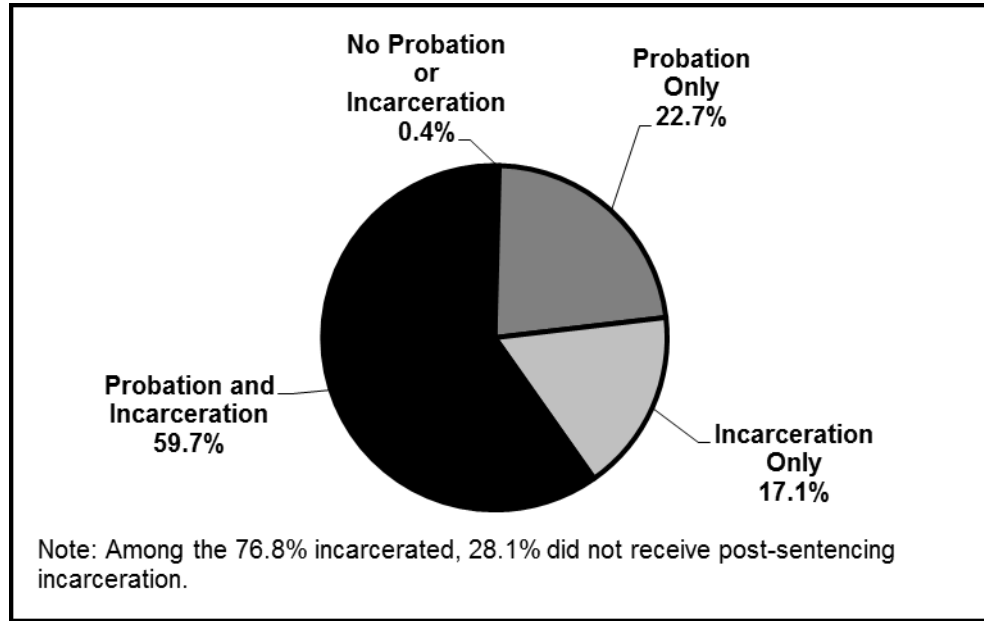


Figure 8 displays the distribution of cases by sentence type. Note that incarceration includes home detention and credited time, as well as post-sentence jail/prison time. Few offenders (.4%) received a sentence that did not include either incarceration or probation. Nearly one-quarter (22.7%) received sentences to probation only. Similarly, 17.1% of offenders received sentences to incarceration only. More than half (59.7%) of all cases resulted in a sentence to both incarceration and probation. Among those incarcerated, 28.1% did not receive post-sentencing incarceration.

<sup>32</sup> ABA plea agreements are those in which the judge, prosecutor, and defense have agreed to the binding terms of the sentence under Maryland Rule 4-243(c).

<sup>33</sup> Cases with missing information on disposition were excluded from the analysis of distribution of cases by disposition (see Figure 7).

**Figure 8. Distribution of Guidelines Cases by Sentence Type, Fiscal Year 2016**

Figures 9a and 9b provide the percentage of offenders incarcerated and the average (mean and median) sentence length among those incarcerated for the past ten fiscal years (2007-2016), respectively. As in the previous figure, incarceration excludes suspended sentence time and includes jail/prison time, home detention time, and credit for time served. For offenders with multiple offenses sentenced together, the figures consider the sentence across all offenses. Figure 9a indicates that the percentage of guidelines cases sentenced to incarceration was highest in fiscal year 2008 (78.7%) and lowest in fiscal year 2015 (75%). The incarceration rate rose slightly in the past fiscal year to 76.9%.

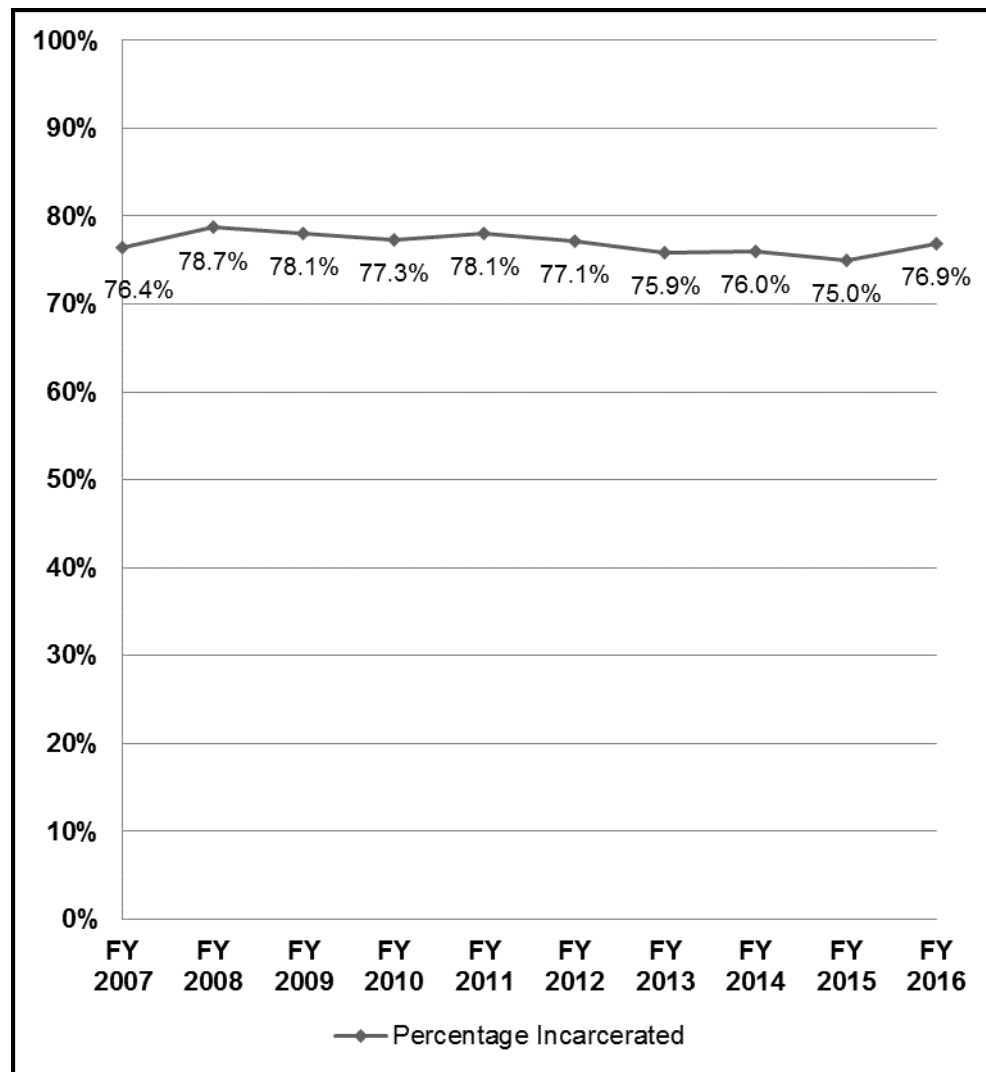
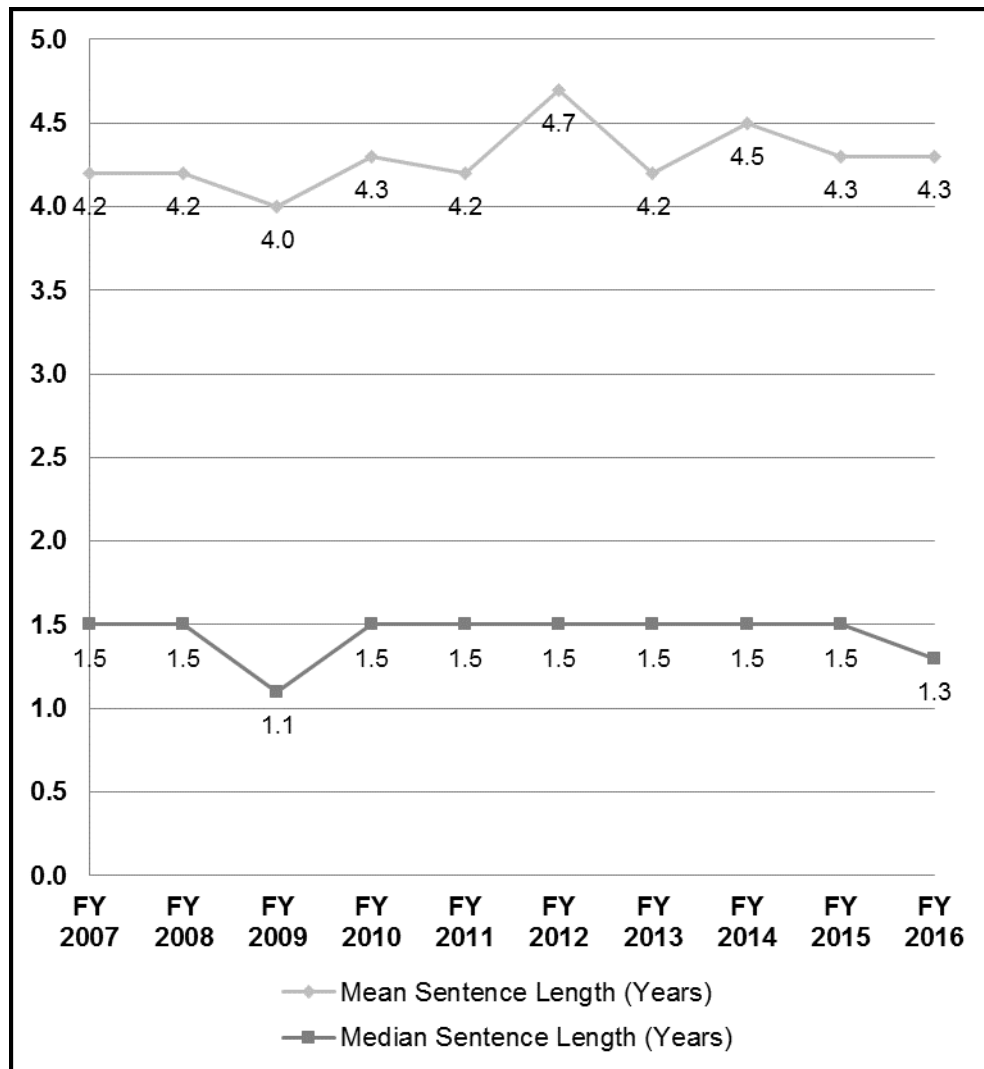
**Figure 9a. Percentage of Guidelines Cases Sentenced to Incarceration by Fiscal Year**

Figure 9b indicates that the typical sentence length among those incarcerated was also relatively stable during the ten-year period. The mean (average) sentence ranged from a low of 4 years in fiscal year 2009 to a high of 4.7 years in fiscal year 2012. The median (middle) sentence was 1.5 years for most of the ten-year period, except for fiscal years 2009 and 2016 when the median dipped slightly to 1.1 years and 1.3 years, respectively. The fact that the mean is larger than the median indicates that the distribution of sentences has a positive skew, with a few extremely long sentences pulling the mean above the median.

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



## JUDICIAL COMPLIANCE WITH MARYLAND'S VOLUNTARY SENTENCING GUIDELINES

The MSCCSP's governing legislation mandates the Commission to examine judicial compliance based on data extracted from the sentencing guidelines worksheets submitted after circuit courts sentence offenders. The following provides a detailed examination of judicial compliance with Maryland's voluntary sentencing guidelines.

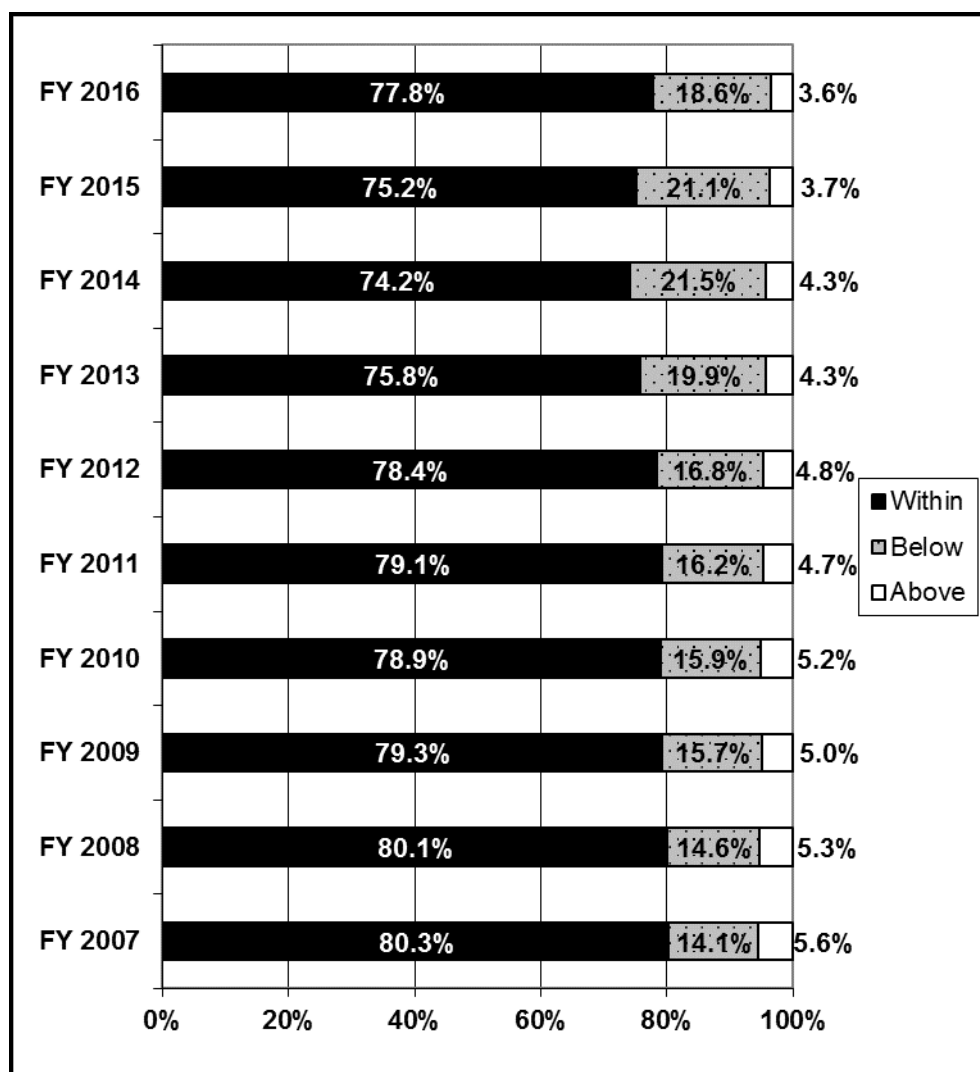
### Judicial Compliance Rates Overall

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The MSCCSP deems a sentence 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 deems a sentence compliant if the judge sentenced an offender to a period of pre-sentence incarceration time with no additional post-sentence incarceration time and the length of credited pre-sentence incarceration exceeds the upper guidelines range for the case. The MSCCSP deems sentences to *corrections options* programs (e.g., drug court; Health-General Article, § 8-507 commitments; home detention) compliant provided that the initial sentence plus any suspended sentence falls within or above the applicable guidelines range and the case does not include a crime of violence, child sexual abuse, or escape. By doing so, the Commission recognizes the state's interest in promoting these alternatives to incarceration. Finally, sentences pursuant to an ABA plea agreement are guidelines-compliant (COMAR 14.22.01.17). The MSCCSP adopted the ABA plea agreement compliance policy in July 2001 to acknowledge that ABA plea agreements reflect the consensus of the local view of an appropriate sentence within each specific community. The *corrections options* and ABA plea agreement compliance policies allow the court to set a "guidelines compliant" sentence which considers the individual needs of the offender, such as substance abuse treatment, as opposed to incarceration.

Figure 10 illustrates the overall guidelines compliance rates for the past ten fiscal years (2007-2016). The figure indicates that in all ten years, the overall rate of compliance exceeded the Commission's benchmark standard of 65% compliance. The aggregate compliance rate has remained relatively unchanged from one year to the next, ranging from a low of 74.2% in fiscal year 2014 to a high of 80.3% in fiscal year 2007.

**Figure 10. Overall Sentencing Guidelines Compliance by Fiscal Year  
(All Cases)**

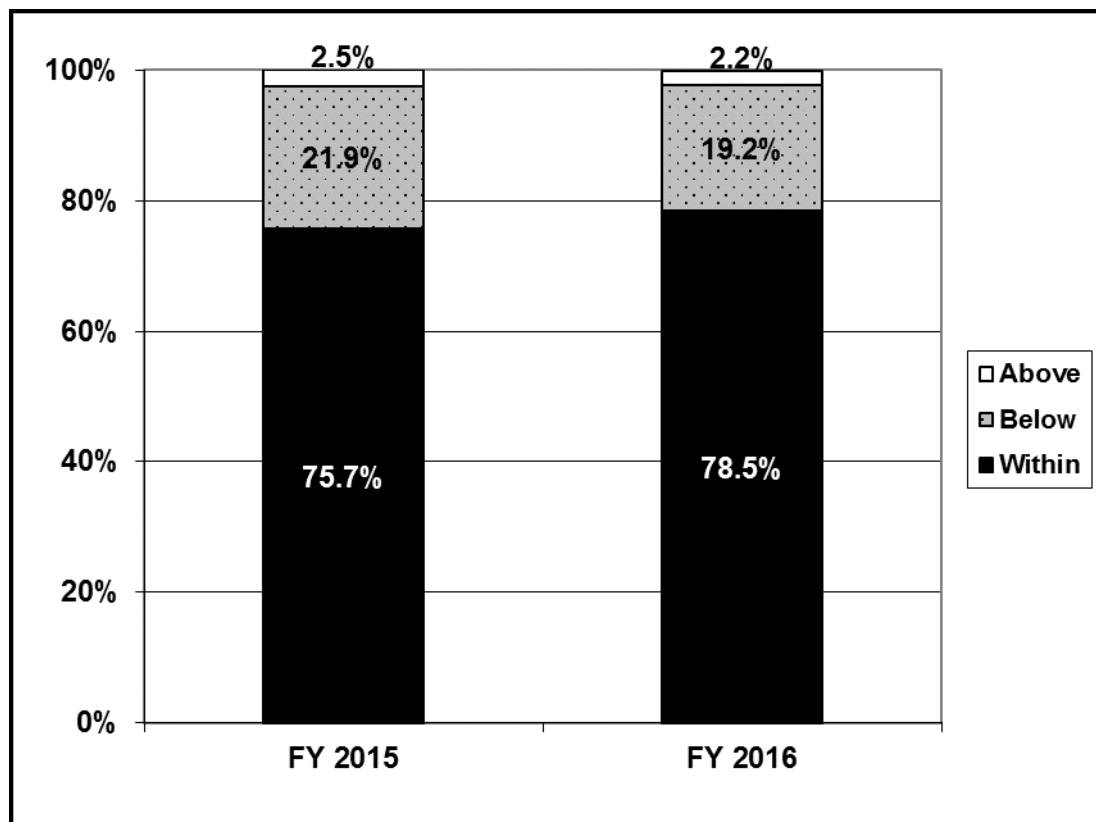


Analyses of judicial compliance in Maryland traditionally focus on sentences for single-count convictions because they permit the most direct comparison of compliance by crime category and by offense type within the applicable cell of the sentencing matrix. Since multiple-count convictions can consist of any combination of person, drug, and property offenses, meaningful interpretations of sentencing patterns within matrices are not possible. Thus, the figures from this point forward focus on sentences for single-count convictions during fiscal years 2015 and 2016. Of the 10,352 sentencing guidelines worksheets submitted to the MSCCSP in fiscal year 2016, 7,914 (76.4%) pertained to single-count convictions.

Figure 11 provides the overall guidelines compliance rates for fiscal years 2015 and 2016 based on single-count convictions. The rates are similar to those in Figure 10. In both years, the overall rate of compliance exceeded the Commission's goal of 65% compliance. Approximately

three-quarters of cases were compliant in both fiscal years. When departures occurred, they were more often below the guidelines than above.

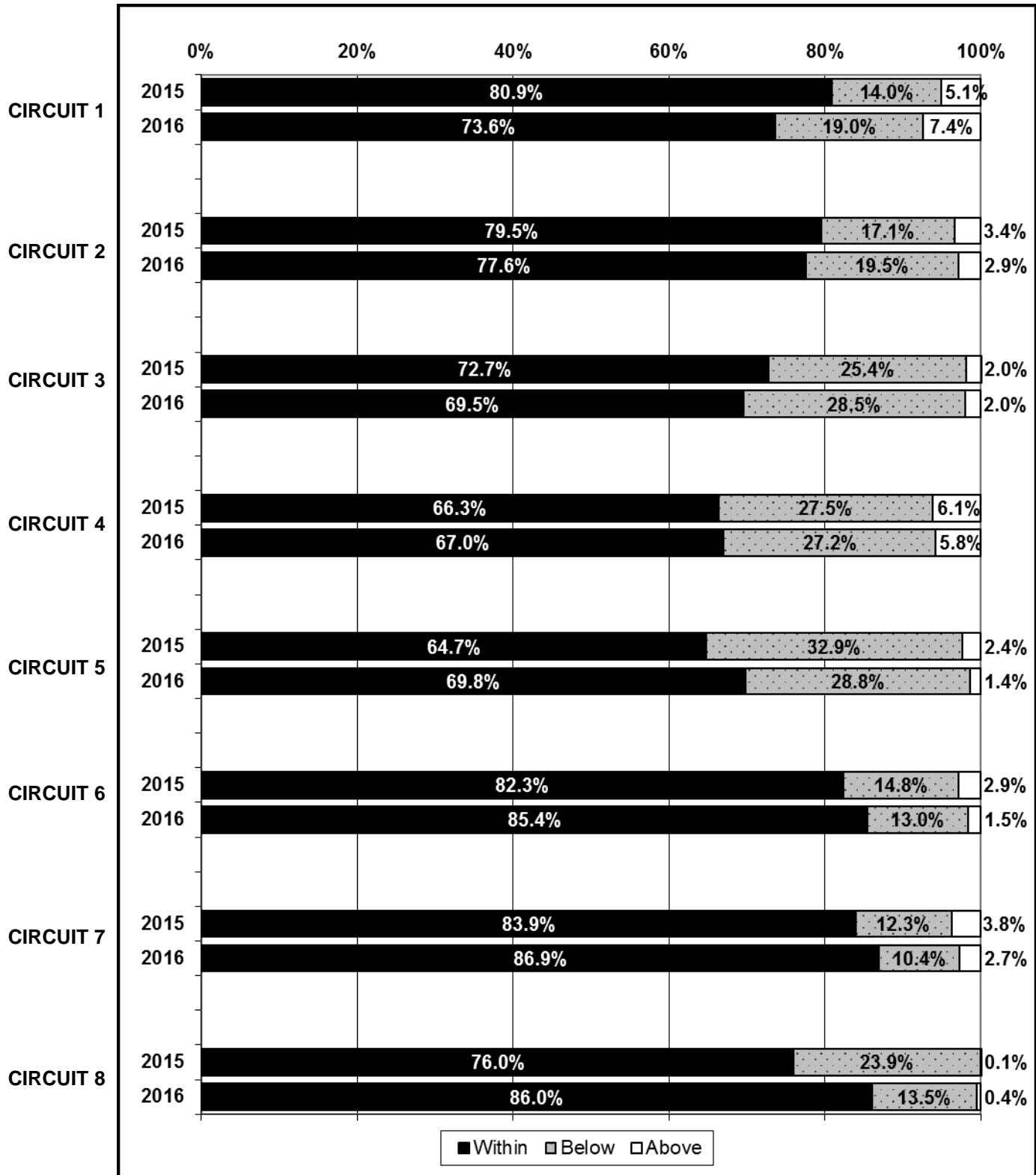
**Figure 11. Overall Sentencing Guidelines Compliance by Fiscal Year  
(Single-Count Convictions)**



### Judicial Compliance Rates by Circuit

As shown in Figure 12, all eight trial court judicial circuits met the 65% compliance benchmark in fiscal year 2016. The Seventh Circuit had the highest compliance rate (86.9%). In contrast, compliance was lowest in the Fourth Circuit (67%). The largest change in compliance rates occurred in the Eighth Circuit, where rates increased 10 percentage points from 76% in fiscal year 2015 to 86% in fiscal year 2016. This increase in compliance rates in the Eighth Circuit from fiscal year 2015 to fiscal year 2016 can largely be attributed to an increase of 9.2 percentage points in the use of ABA pleas during the same period of time in this circuit.

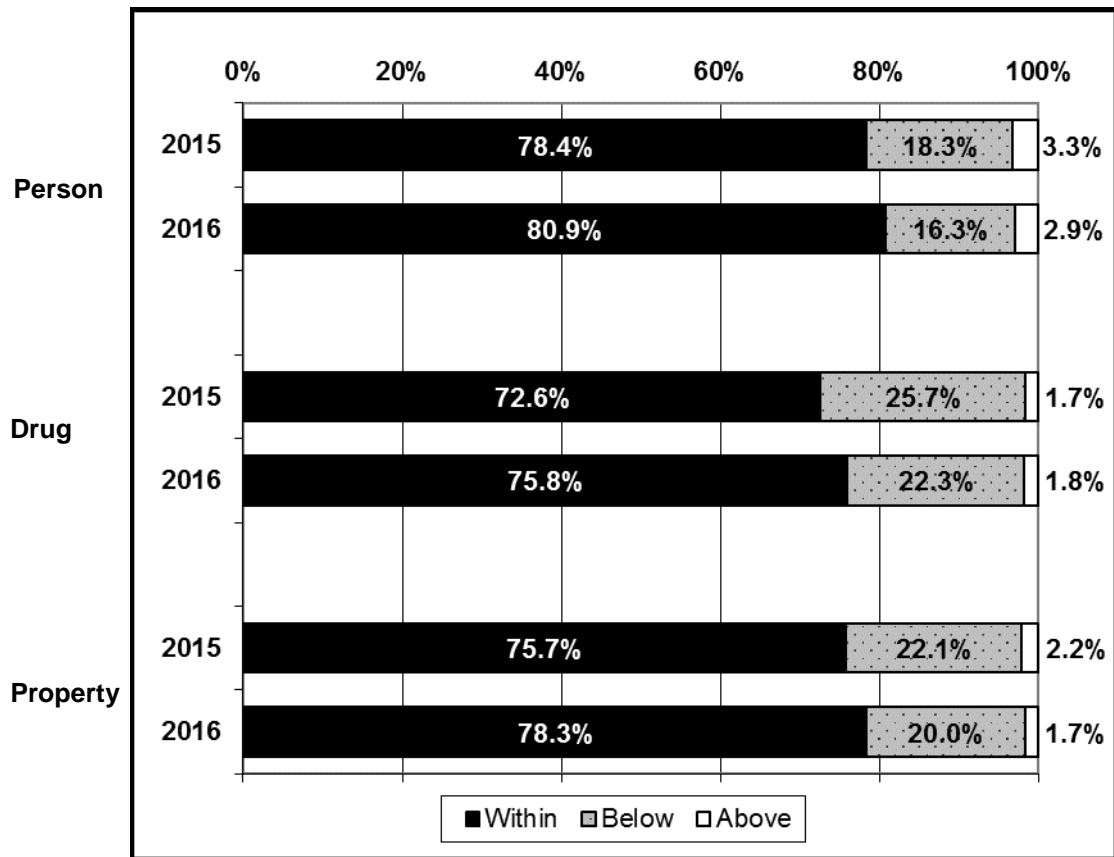


**Figure 12. Sentencing Guidelines Compliance by Circuit and Fiscal Year**

## Judicial Compliance Rates by Crime Category

Figure 13 shows judicial compliance by crime category for fiscal years 2015 and 2016. Person offenses were the least likely to result in a departure from the guidelines in fiscal year 2016, 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 fiscal year 2015 to fiscal year 2016, and the 65% benchmark was met for all three crime categories in both fiscal years.<sup>34</sup>

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

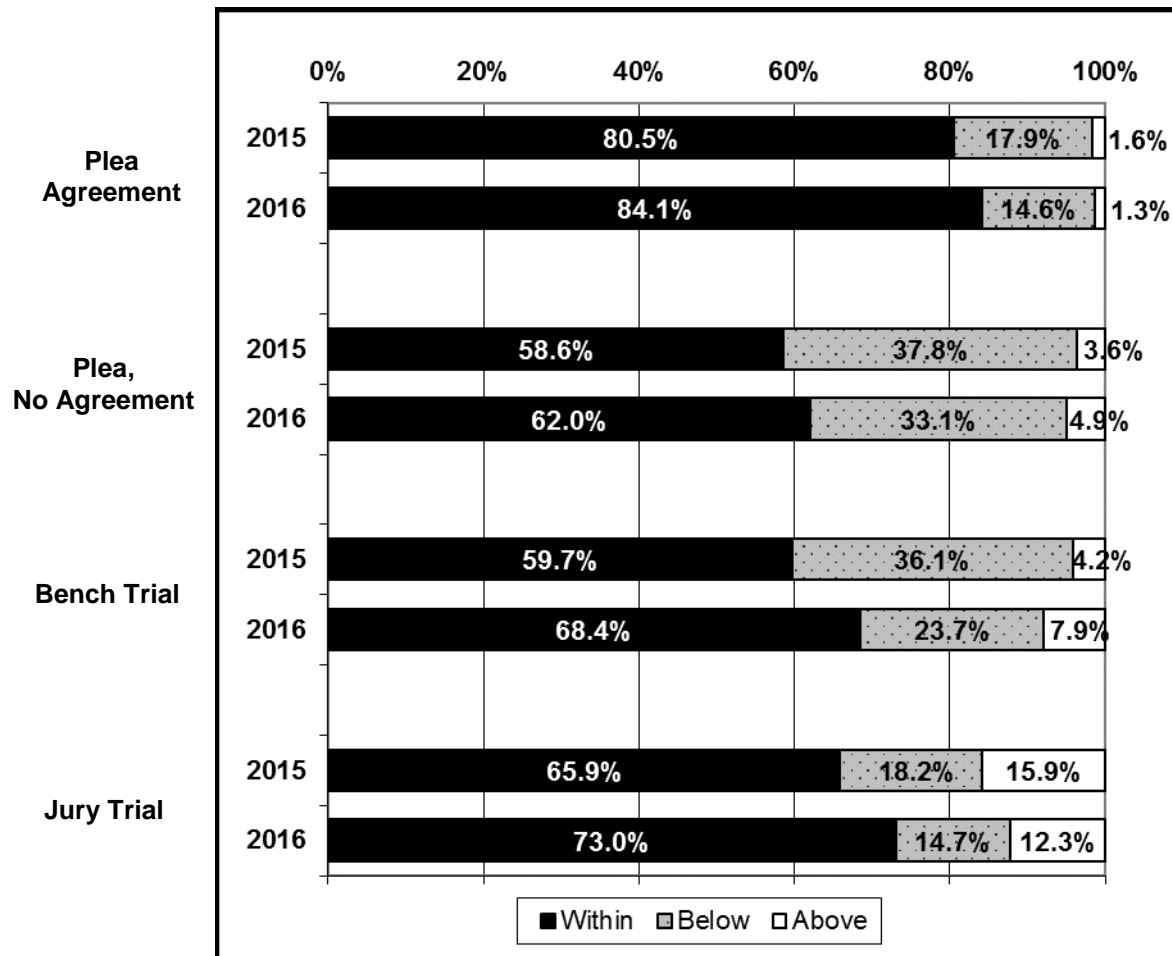


<sup>34</sup> See Appendix C for sentencing guidelines compliance and average sentence for the five most common offenses in each crime category.

## 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 (84.1%) in fiscal year 2016. This is not surprising given that the plea agreement category includes ABA plea agreements, which are compliant by definition. In contrast, cases resolved by a plea with no agreement had the lowest compliance rate (62%). Cases resolved by a bench trial saw the largest change in compliance rates, with rates increasing from 59.7% in fiscal year 2015 to 68.4% in fiscal year 2016. Although this is a relatively large percentage change, bench trials represent a small percentage of dispositions (<1%). Finally, jury trials were the only disposition type where upward departures occurred nearly as often as downward departures in fiscal year 2016.

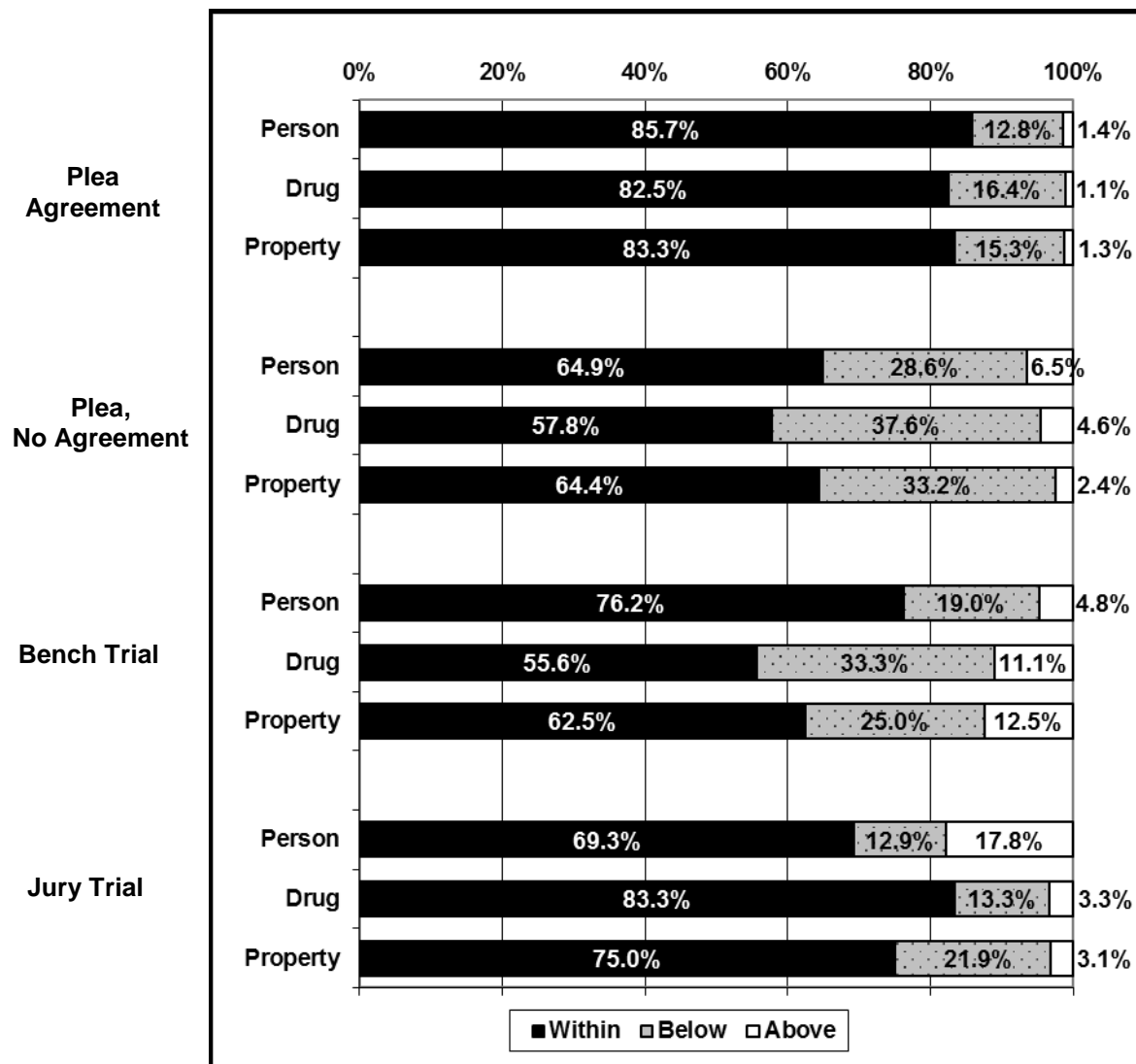
**Figure 14. Sentencing Guidelines Compliance by Type of Disposition and Fiscal Year**



## Judicial Compliance Rates by Crime Category and Disposition

Figure 15 displays compliance rates by crime category and disposition for fiscal year 2016. Some of the rates are based on a very small number of cases. For example, the MSCCSP received only 8 worksheets in fiscal year 2016 for single-count property offenses adjudicated by a bench trial. Small numbers sharply limit the ability to provide meaningful interpretation.

**Figure 15. Sentencing Guidelines Compliance by Crime Category and Disposition, Fiscal Year 2016**



The highest compliance rates were observed for person, property, and drug offenses adjudicated by a plea agreement (85.7%, 83.3%, and 82.5%, respectively) and drug offenses adjudicated by a jury trial (83.3%). Four of the twelve compliance rates fell short of the benchmark of 65%: drug and property offenses resolved by a plea with no agreement (57.8% and 64.4%, respectively) and drug and property offenses resolved by a bench trial (55.6% and

62.5%, respectively).<sup>35</sup> Upward departures were most common among person offenses disposed of by a jury trial (17.8%), while downward departures occurred most often among drug offenses disposed of by a plea with no agreement (37.6%).

## Departure Reasons

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COMAR 14.22.01.05A directs the sentencing judge to document the reason or reasons for imposing a sentence outside of the recommended guidelines range on the sentencing guidelines worksheet. To facilitate the reporting of mitigating and aggravating departure reasons on the sentencing guidelines worksheet, the MSCCSP provides judges with a reference card listing the more common departure reasons and including the accompanying numerical departure code (Appendix E contains a list of these departure reasons). The worksheet allows for up to three departure codes 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, sentencing guidelines worksheets continue to underreport departure reasons. In fiscal year 2016, the reason for departure was provided in 46.3% of all departure cases. This represents an increase in reporting from fiscal year 2015 (40.9%). The MSCCSP staff will continue in its training sessions to emphasize the need to include a reason for departure. Additionally, the continued deployment of MAGS to new jurisdictions will help facilitate the collection of departure reasons, as the departure reason is a required field necessitating completion prior to the electronic submission of any sentence identified as a departure from the guidelines. It is important for judges to provide the reason for departure, since those reasons will likely inform the Commission's consideration of potential guidelines revisions.

Tables 9 and 10 display the reasons given for departures from the guidelines in fiscal year 2016. The tables include all of the reasons listed on the reference card as well as the most commonly cited "other" reasons. Table 9 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 55.8% of downward departures, the reason for departure was missing. 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

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<sup>35</sup> Compliance rates were rounded to the nearest whole number to determine whether the 65% benchmark was met.

Division of Parole and Probation; and 3) offender's commitment to substance abuse treatment or other therapeutic program.

**Table 9. Departure Reasons for Cases Below the Guidelines, Fiscal Year 2016<sup>36</sup>**

| <b>Mitigating Reasons</b>   | <b>Percent of Departures Where Reason is Cited</b> | <b>Valid Percent<sup>37</sup></b> |
|---|--|-----------------------------------|
| <i>No Departure Reason Given</i>  | 55.8%  | ---                               |
| The parties reached a plea agreement that called for a reduced sentence         | 19.9%  | 44.9%                             |
| Recommendation of State's Attorney or Division of Parole and Probation          | 12.7%  | 28.8%                             |
| Offender's commitment to substance abuse treatment or other therapeutic program | 8.4%   | 19.0%                             |
| Offender's minor role in the offense  | 2.8%   | 6.3%                              |
| Offender made restorative efforts after the offense                             | 2.4%   | 5.4%                              |
| Offender's age/health   | 1.5%   | 3.4%                              |
| Offender had diminished capability for judgment                                 | 1.2%   | 2.7%                              |
| Offender's prior criminal record not significant                                | 1.1%   | 2.5%                              |
| Victim's participation in the offense lessens the offender's culpability        | 1.0%   | 2.2%                              |
| Offender was influenced by coercion or duress                                   | 0.2%   | 0.4%                              |
| Other reason (not specified above)  | 6.3%   | 14.2%                             |

<sup>36</sup> Each case may cite multiple reasons.

<sup>37</sup> Valid percent based on the number of cases below the guidelines with reason cited.

Table 10 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 35.6% of upward departures, the reason for departure was not provided. The most commonly cited reasons for departures above the guidelines were: 1) recommendation of the State's Attorney or Division of Parole and Probation; 2) the level of harm was excessive; and 3) offender's major role in the offense.

**Table 10. Departure Reasons for Cases Above the Guidelines, Fiscal Year 2016<sup>38</sup>**

| <b>Aggravating Reasons</b>   | <b>Percent of Departures Where Reason is Cited</b> | <b>Valid Percent<sup>39</sup></b> |
|--|--|-----------------------------------|
| <i>No Departure Reason Given</i>   | 35.6%  | ---                               |
| Recommendation of State's Attorney or Division of Parole and Probation     | 33.3%  | 51.8%                             |
| The level of harm was excessive  | 11.9%  | 18.4%                             |
| Offender's major role in the offense                                       | 10.2%  | 15.8%                             |
| The vicious or heinous nature of the conduct                               | 9.0%   | 14.0%                             |
| Special circumstances of the victim  | 8.5%   | 13.2%                             |
| Offender exploited a position of trust                                     | 5.1%   | 7.9%                              |
| Offender's significant participation in major controlled substance offense | 5.1%   | 7.9%                              |
| Offender's prior criminal record significant                               | 3.4%   | 5.3%                              |
| The parties reached a plea agreement                                       | 3.4%   | 5.3%                              |
| Offender committed a "white collar" offense                                | 0.6%   | 0.9%                              |
| Other reason (not specified above)   | 7.3%   | 11.4%                             |

<sup>38</sup> Each case may cite multiple reasons.

<sup>39</sup> Valid percent based on the number of cases above the guidelines with reason cited.

## ADDITIONAL INFORMATION COLLECTED

### Report on Adjustments from Reconsidered Sentences Involving Crimes of Violence

CP, § 6-209 requires the MSCCSP's annual report to "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." Table 11 reviews reconsidered sentences reported to the MSCCSP for crimes of violence as defined in CR, § 14-101 for fiscal year 2016 by circuit. The table uses data on reconsidered sentences for thirty-one offenders and fifty-one 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 2016.

**Table 11. Reconsiderations for Crimes of Violence (CR, § 14-101), Fiscal Year 2016<sup>40</sup>**

| Circuit | Offense                                    | N  |
|---------|--|----|
| SECOND  | Assault, 1 <sup>st</sup> Degree            | 1  |
|         | Child Abuse, Sexual                        | 1  |
| THIRD   | Robbery                                    | 1  |
| FOURTH  | Assault, 1 <sup>st</sup> Degree            | 1  |
| SIXTH   | Assault, 1 <sup>st</sup> Degree            | 6  |
|         | Firearm Use in Felony or Crime of Violence | 3  |
|         | Kidnapping                                 | 1  |
|         | Murder, 2 <sup>nd</sup> Degree, Attempted  | 1  |
|         | Robbery                                    | 5  |
|         | Robbery with Dangerous Weapon              | 19 |
| SEVENTH | Assault, 1 <sup>st</sup> Degree            | 2  |
|         | Firearm Use in Felony or Crime of Violence | 2  |
|         | Murder, 2 <sup>nd</sup> Degree             | 1  |
|         | Murder, 2 <sup>nd</sup> Degree, Attempted  | 1  |
|         | Robbery                                    | 1  |
|         | Robbery with Dangerous Weapon              | 2  |
| EIGHTH  | Assault, 1 <sup>st</sup> Degree            | 1  |
|         | Firearm Use in Felony or Crime of Violence | 1  |
|         | Murder, 1 <sup>st</sup> Degree             | 1  |

<sup>40</sup> Table 11 is based on reconsidered sentences for 31 offenders and 51 offenses.



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## Economic Loss in Title 7 and Title 8 Crimes

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CP, § 6-214 directs 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.<sup>41</sup> In fiscal year 2016, sentencing guidelines worksheets reported 1,429 sentences for theft, fraud, and related crimes. Only 656 (45.9%) of these cases recorded the amount of economic loss to the victim. However, statewide deployment of MAGS will help facilitate the collection of this information, as the automated system prompts the user to provide the amount of economic loss to the victim for any sentencing event involving a theft- or fraud-related crime. When reported, economic loss ranged in value from a minimum of no loss to a maximum of \$409,000. The mean (average) amount of loss was \$11,777, while the median (middle) amount of loss was \$1,888. The fact that the mean is larger than the median indicates that the distribution of economic loss has a positive skew, with a few extremely large loss amounts pulling the mean above the median. Finally, the majority of cases in which the amount of economic loss was reported on the sentencing guidelines worksheet involved a conviction for *felony theft or theft scheme, at least \$10,000 but less than \$100,000; felony theft or theft scheme, at least \$1,000 but less than \$10,000; or misdemeanor theft or theft scheme, less than \$1,000* (CR, § 7-104).

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## Victim Information

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The sentencing guidelines worksheet contains several victim-related items designed to capture the rights of victims at sentencing and whether victim-related court costs were imposed pursuant to Courts and Judicial Proceedings Article (CJ), § 7-409, Annotated Code of Maryland, and Maryland Rule 4-353. Figures 16 through 18 detail the responses to these items in fiscal year 2016. Note that the victim-related items are often left blank on the worksheet. For example, whether victim-related court costs were imposed was left blank on 57.1% of worksheets, and approximately half of all worksheets were missing information on whether there was a victim. The figures presented here are limited to the subset of cases with valid victim-related data.

Figure 16 indicates that victim-related court costs were imposed in 23.3% of cases. These court costs may be imposed for all crime types, not just those involving a direct victim. The costs

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<sup>41</sup> 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 14.22.01.02B(6-1)).

outlined in CJ, § 7-409 include a \$45 Circuit Court fee that is divided among the State Victims of Crime Fund, the Victim and Witness Protection and Relocation Fund, and the Criminal Injuries Compensation Fund.

**Figure 16. Distribution of Guidelines Cases by Whether Victim-Related Court Costs Imposed, Fiscal Year 2016**

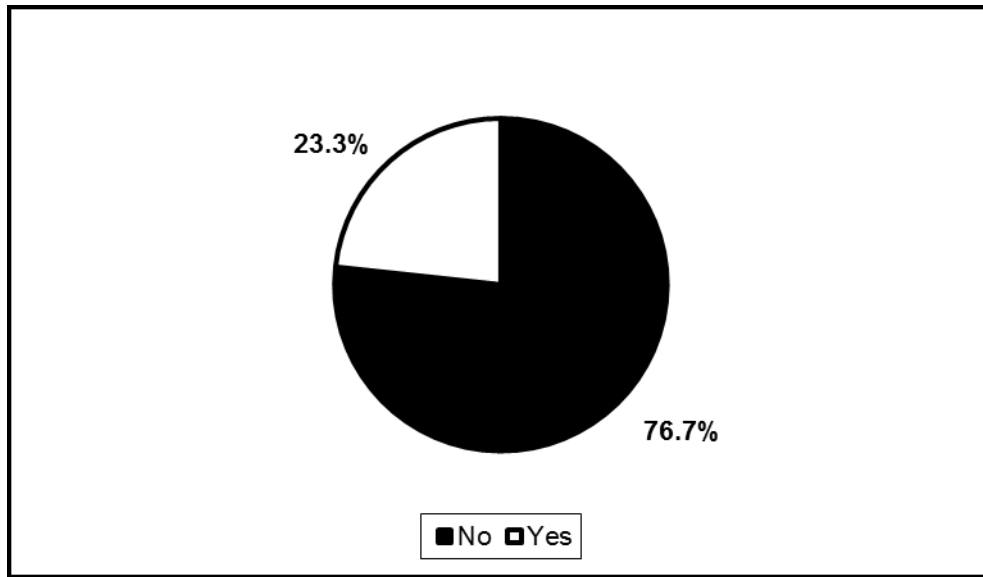
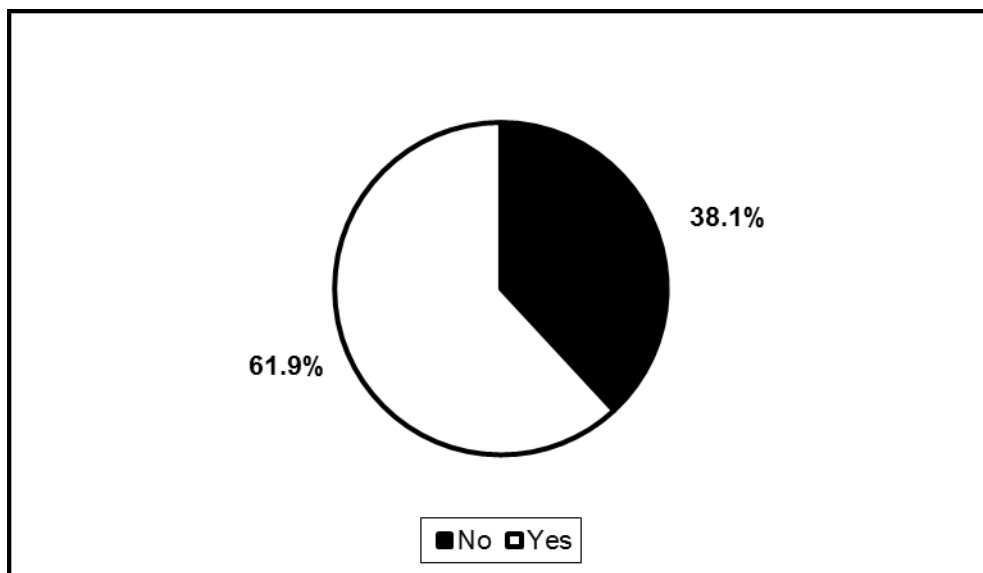


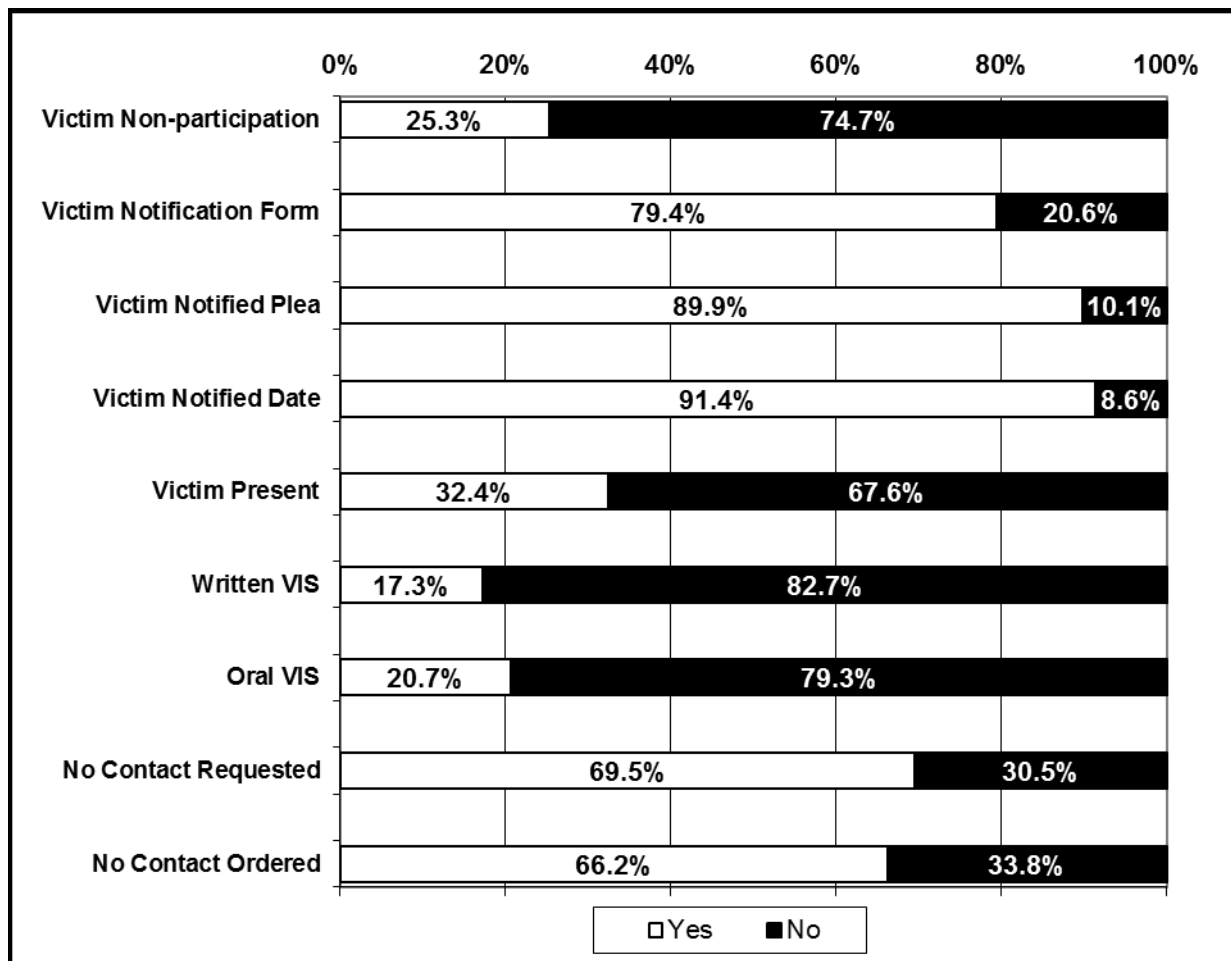
Figure 17 illustrates that 61.9% of worksheets with valid information on the victim-related questions indicated there was a victim. The responses to the items in the *Victim Information* section of the worksheet for cases involving a victim are summarized in Figure 18.

**Figure 17. Distribution of Guidelines Cases by Whether Victim Involved, Fiscal Year 2016**



In 25.3% of cases involving a victim, the victim did not participate, was not located, did not maintain contact with involved parties, or waived his/her rights. A Crime Victim Notification and Demand for Rights form was filed by the victim in 79.4% of cases. Most victims (89.9%) were notified of the terms and conditions of a plea agreement prior to entry of a plea. Similarly, 91.4% of victims were notified of the court date for sentencing. Slightly less than one-third of victims were present at sentencing. A written Victim Impact Statement (VIS) was prepared in 17.3% of cases involving a victim, while the victim or state made a request for an oral VIS in 20.7% of cases. Finally, the victim or state made a request that the defendant have no contact with the victim in 69.5% of cases, and the sentencing judge ordered the defendant to have no contact with the victim in 66.2% of cases involving a victim.

**Figure 18. Distribution of Guidelines Cases by Victim Information, Fiscal Year 2016**



## PLANNED ACTIVITIES FOR 2017

The work of the MSCCSP in 2017 will largely be driven by pressing policy issues and concerns that develop throughout the course of the year. However, the MSCCSP has identified several other important activities that will be addressed in 2017. Specifically, the MSCCSP will work to implement modifications to the sentencing guidelines corresponding to the October 1, 2017, enactment of penalty revisions resulting from the JRA. Additional JRA-related activities will include work to complete a study on how to include more alternatives to incarceration in the sentencing guidelines and collaborating with criminal justice partners to collect data to be provided to the JROB and to create performance measures to assess the impact of the JRA.

The MSCCSP will continue to administer Maryland's sentencing guidelines by completing routine activities, such as, collecting sentencing guidelines worksheets, maintaining the sentencing guidelines database, monitoring judicial compliance with the guidelines, and providing sentencing guidelines education and training. Additionally, the MSCCSP will review all criminal offenses and changes in the criminal code resulting from the 2017 Legislative Session and adopt seriousness categories for new and revised offenses.

Furthermore, the MSCCSP will continue to deploy MAGS in a gradual statewide roll-out of the automated system. The MSCCSP expects to deploy MAGS in seven new jurisdictions in 2017. The MSCCSP staff will work with individual jurisdictions to establish secure login procedures for access to MAGS and will provide orientation and training on the use of the application. The MSCCSP will also coordinate with the AOC to continue planning for interoperability with the Judiciary's new case management system, MDEC.

The MSCCSP will work further with the MDAC at the University of Maryland, College Park to complete an empirical review of the juvenile delinquency component of the offender score and will consider potential revisions to the sentencing guidelines guided by these analyses.

The activities described above are just a few of the many tasks that will be completed by the MSCCSP in 2017 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<br>(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*

| <b>Sentencing Matrix for Drug Offenses</b><br>(Revised 7/2016)                                      |   |          |          |          |          |          |          |                  |
|---|---|----------|----------|----------|----------|----------|----------|------------------|
| <b>Offender Score</b>   |   |          |          |          |          |          |          |                  |
| <b>Offense Seriousness Category</b>   | <b>0</b>  | <b>1</b> | <b>2</b> | <b>3</b> | <b>4</b> | <b>5</b> | <b>6</b> | <b>7 or more</b> |
| <b>VII</b>  | P   | P        | P        | P-1M     | P-3M     | P-6M     | 3M-6M    | 6M-2Y            |
| <b>VI</b>   | Available for future use. There are currently no seriousness category VI drug offenses. |          |          |          |          |          |          |                  |
| <b>V</b>  | P-1M  | P-6M     | P-1Y     | 1M-1Y    | 2M-18M   | 3M-2Y    | 4M-3Y    | 6M-4Y            |
| <b>IV</b>   | P-3M  | P-9M     | 1M-1Y    | 2M-18M   | 3M-2Y    | 4M-2.5Y  | 6M-3Y    | 8M-5Y            |
| <b>III-A<br/>Marijuana<br/>import 45<br/>kilograms or<br/>more, and<br/>MDMA over 750<br/>grams</b> | P-18M   | P-2Y     | 6M-2Y    | 1Y-4Y    | 2Y-6Y    | 3Y-8Y    | 4Y-12Y   | 10Y-20Y          |
| <b>III-B<br/>Non-marijuana<br/>and non-MDMA,<br/>Except Import</b>                                  | 6M-3Y   | 1Y-3Y    | 18M-4Y   | 3Y-7Y    | 4Y-8Y    | 5Y-10Y   | 7Y-14Y   | 12Y-20Y          |
| <b>III-C<br/>Non-marijuana<br/>and non-MDMA,<br/>Import</b>   | 1Y-4Y   | 2Y-5Y    | 3Y-6Y    | 4Y-7Y    | 5Y-8Y    | 6Y-10Y   | 8Y-15Y   | 15Y-25Y          |
| <b>II</b>   | 20Y-24Y   | 22Y-26Y  | 24Y-28Y  | 26Y-30Y  | 28Y-32Y  | 30Y-36Y  | 32Y-37Y  | 35Y-40Y          |

***P=Probation, M=Months, Y=Years***

Note: At its December 8, 2015, meeting, the Commission approved revisions to the recommended ranges in the rows corresponding to seriousness categories IV and V drug offenses. Following promulgation through COMAR, the revisions were adopted effective July 1, 2016. See the section *Revisions to the Sentencing Matrix for Drug Offenses* of this report for a complete discussion of the revisions.

| Sentencing Matrix for Property Offenses<br>(Revised 7/2001) |       |       |       |        |        |         |         |           |
|---|-------|-------|-------|--------|--------|---------|---------|-----------|
| Offender Score  |       |       |       |        |        |         |         |           |
| Offense<br>Seriousness<br>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 1.8)

| MARYLAND SENTENCING GUIDELINES WORKSHEET   |  |   |  |   |  |   |  |   |  | OFFENDER NAME - Last, First, Middle                                      |  | SID#   |  | SEX<br>M F |  | BIRTHDATE       |  | JURISDICTION |  |
|--|--|---|--|---|--|---|--|---|--|--|--|--|--|------------|--|-----------------|--|--------------|--|
| PSI  |  | DATE OF OFFENSE   |  | DATE OF SENTENCING  |  | DISPOSITION TYPE  |  | REPRESENTATION  |  | ETHNICITY  |  | RACE   |  | MAND. MIN  |  | CASE #/DOCKET # |  |              |  |
| AT THIS SENTENCING, NUMBER OF:   |  | CONVICTED OFFENSES  |  | CRIMINAL EVENTS   |  | ABA plea agreement<br>Non-ABA plea agreement<br>Plea, no agreement<br>Court trial   |  | Private<br>Public Defender<br>Court Appointed<br>Self |  | Hispanic/Latino Origin<br>Yes No<br>Victim Court Costs Imposed<br>Yes No |  | Black<br>White<br>Native Hawaiian/Pacific Islander<br>American Indian/Alaskan Native |  |            |  |                 |  |              |  |
| CONVICTED OFFENSE TITLE  |  | I-VII   |  | CJIS CODE   |  | MD CODE, ART, & SECTION   |  | STAT. MAX   |  |  |  |  |  |            |  |                 |  |              |  |
| 1 <sup>st</sup> Convicted Offense  |  |   |  |   |  |   |  |   |  |  |  |  |  |            |  |                 |  |              |  |
| 2 <sup>nd</sup> Convicted Offense  |  |   |  |   |  |   |  |   |  |  |  |  |  |            |  |                 |  |              |  |
| 3 <sup>rd</sup> Convicted Offense  |  |   |  |   |  |   |  |   |  |  |  |  |  |            |  |                 |  |              |  |
| OFFENSE SCORE(S) - Offense Against a Person Only   |  | OFFENDER SCORE  |  | GUIDELINES RANGE  |  | ACTUAL SENTENCE - Imposed, Suspended, Time Served, Probation, Restitution, Fine, Corrections Options Programs (Drug Treatment Court, Home Detention Etc.)   |  |   |  |  |  |  |  |            |  |                 |  |              |  |
| <b>1<sup>st</sup> Off</b> <u>2<sup>nd</sup> Off</u> <u>3<sup>rd</sup> Off</u><br><b>A. Seriousness Category</b><br>1 = 1 = V - VII<br>3 = 3 = IV<br>5 = 5 = III<br>8 = 8 = II<br>10 = 10 = I<br><b>B. Victim Injury</b><br>0 = 0 = No Injury<br>1 = 1 = Injury, Non-Permanent<br>2 = 2 = Permanent Injury or Death<br><b>C. Weapon Presence</b><br>0 = 0 = No Weapon<br>1 = 1 = Weapon Other Than Firearm<br>2 = 2 = Firearm or Explosive<br><b>D. Special Victim Vulnerability</b><br>0 = 0 = No<br>1 = 1 = Yes |  | <b>A. Relationship to CJS When Instant Offense Occurred</b><br>0 = None or Pending Cases<br>1 = Court or Other Criminal Justice Supervision<br><b>B. Juvenile Delinquency</b><br>0 = 23 years or older or crime-free for 5 years or no more than 1 finding of a delinquent act<br>1 = Under 23 years old and 2 or more findings of a delinquent act or 1 commitment<br>2 = Under 23 years and committed 2 or more times<br><b>C. Prior Adult Criminal Record</b><br>0 = None 3 = Moderate<br>1 = Minor 5 = Major<br><b>D. Prior Adult Parole/Prob Violation</b><br>0 = No 1 = Yes |  | <b>1<sup>st</sup> Con. Off.</b><br>TO<br><b>2<sup>nd</sup> Con. Off.</b><br>TO<br><b>3<sup>rd</sup> Con. Off.</b><br>TO |  | <b>1<sup>st</sup> Convicted Offense</b><br>For Theft, Fraud, and Related Crimes, please indicate: [Economic loss \$] [Restitution Requested] [Subsequent Offender Piled] [Restitution Proven]<br><b>2<sup>nd</sup> Convicted Offense</b><br>For Theft, Fraud, and Related Crimes, please indicate: [Economic loss \$] [Restitution Requested] [Subsequent Offender Piled] [Restitution Proven]<br><b>3<sup>rd</sup> Convicted Offense</b><br>For Theft, Fraud, and Related Crimes, please indicate: [Economic loss \$] [Restitution Requested] [Subsequent Offender Piled] [Restitution Proven] |  |   |  |  |  |  |  |            |  |                 |  |              |  |
| <b>OFFENSE SCORE(S)</b><br>_____   |  | <b>OFFENDER SCORE</b><br>_____  |  | <b>Overall Guidelines Range</b><br>Multiple Counts Only<br>_____ TO _____   |  | <b>Was the offender sentenced to a Corrections Options program under Commission criteria?</b><br>Drug Court Yes No Other Yes No<br><b>Additional Information or Institutional/Parole Recommendation</b><br>_____<br>Title<br>_____<br>Sentencing Judge (Please Print)<br>_____<br>Sentencing Judge's Signature<br>_____   |  |   |  |  |  |  |  |            |  |                 |  |              |  |
| <b>VICTIM INFORMATION</b><br>Victim Yes No<br>Victim Non-participation Yes No<br>Victim Notification Form Yes No<br>Victim Notified Plea Yes No<br>Victim Notified Date Yes No<br>Victim Present Yes No<br>Written VIS Yes No<br>Oral VIS Yes No<br>No Contact Requested Yes No<br>No Contact Ordered Yes No   |  | <b>SENTENCE DEPARTURE INFORMATION</b><br>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.<br>_____<br><b>Departure Code 9 or 18 (Please Explain):</b><br>_____   |  | <b>50% of Sentence Announced for COVs</b><br>Yes No   |  |   |  |   |  |  |  |  |  |            |  |                 |  |              |  |

4/2013 (1.8)

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

## Appendix C:

### Sentencing Guidelines Compliance and Average Sentence by Offense Type, Fiscal Year 2016 (Most Common Person, Drug, and Property Offenses)

| Person Offenses  | N   | Guidelines Compliance |       |       | % Incarc <sup>1</sup> | Average Sentence Among Incarcerated |                       |
|--|-----|-----------------------|-------|-------|-----------------------|-------------------------------------|-----------------------|
|  |     | Within                | Below | Above |                       | Total Sentence                      | Total, Less Suspended |
| Assault, 2 <sup>nd</sup> Degree                                  | 903 | 85.1%                 | 12.2% | 2.7%  | 68.3%                 | 5.7 years                           | 1.2 years             |
| Robbery  | 393 | 85.5%                 | 12%   | 2.6%  | 89.8%                 | 8.2 years                           | 2.6 years             |
| Robbery with Dangerous Weapon                                    | 267 | 70.4%                 | 28.1% | 1.5%  | 92.1%                 | 11 years                            | 4.2 years             |
| Assault, 1 <sup>st</sup> Degree                                  | 206 | 70.9%                 | 26.7% | 2.4%  | 93.7%                 | 12.5 years                          | 3.9 years             |
| Possession of Regulated Firearm by Restricted Person             | 205 | 74.1%                 | 25.9% | ---   | 63.9%                 | 3.9 years                           | 1.4 years             |
| <b>Drug Offenses</b>   |     |                       |       |       |                       |                                     |                       |
| Distribution Marijuana   | 567 | 87.1%                 | 12.5% | 0.4%  | 51%                   | 3.2 years                           | 0.6 years             |
| Distribution Heroin  | 566 | 68%                   | 30%   | 1.9%  | 81.8%                 | 8.8 years                           | 2.4 years             |
| Distribution Cocaine   | 516 | 68.4%                 | 30.6% | 1%    | 79.1%                 | 8.7 years                           | 2.5 years             |
| Possession Marijuana   | 212 | 95.8%                 | 0.9%  | 3.3%  | 38.2%                 | 0.6 years                           | 0.2 years             |
| Distribution Narcotic (drug not identified)                      | 171 | 76.6%                 | 22.2% | 1.2%  | 82.5%                 | 8.4 years                           | 2.3 years             |
| <b>Property Offenses</b>   |     |                       |       |       |                       |                                     |                       |
| Burglary, 1 <sup>st</sup> Degree                                 | 270 | 75.9%                 | 23.3% | 0.7%  | 82.6%                 | 9.7 years                           | 3.6 years             |
| Theft or Theft Scheme, At Least \$1,000 but Less Than \$10,000   | 255 | 81.2%                 | 17.3% | 1.6%  | 76.1%                 | 5.9 years                           | 1.8 years             |
| Burglary, 2 <sup>nd</sup> Degree                                 | 245 | 74.3%                 | 24.9% | 0.8%  | 76.7%                 | 7.6 years                           | 2.8 years             |
| Theft or Theft Scheme, Less Than \$1,000                         | 209 | 77%                   | 20.6% | 2.4%  | 59.8%                 | 1.1 years                           | 0.5 years             |
| Theft or Theft Scheme, At Least \$10,000 but Less Than \$100,000 | 144 | 88.2%                 | 10.4% | 1.4%  | 71.5%                 | 8.6 years                           | 2.2 years             |

<sup>1</sup> % *Incarcerated* includes those who are incarcerated pre-trial only, as well as those incarcerated after sentencing.

## 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 pleaded guilty without any agreement from the prosecutor or judge to perform in a particular way.   |
| Bench Trial            | The disposition resulted from a trial without a jury in which the judge decided the factual questions.  |
| Jury Trial             | The disposition resulted from a trial in which the jury decided the factual questions.  |
| Reconsideration        | Reconsideration of a previously imposed sentence.   |
| Review                 | Pursuant to Criminal Procedure Article, § 8-105, a panel review of a previously imposed sentence.   |

## Appendix E:

### Common Departure Reasons Listed on the Sentencing Guidelines Departure Reference Card

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