

Maryland State Commission on Criminal Sentencing Policy



Annual Report

2018

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Criminal Sentencing Policy

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

Brianna Tocci, University of Maryland

MSCCSP



Maryland State Commission on Criminal Sentencing Policy

Chair

Hon. Glenn T. Harrell, Jr.

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Sec. Stephen T. Moyer

Col. William M. Pallozzi

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Del. Joseph F. Vallario, Jr.

Executive Director

David A. Soulé, Ph.D.

January 31, 2019

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 2018 Annual Report of the MSCCSP.

This report details the 2018 activities of the MSCCSP. This work is highlighted by the implementation of a revised juvenile delinquency component of the prior record score, continued deployment of the Maryland Automated Guidelines System (MAGS), and deciding to expand the grouping of designated corrections options allowing judges to utilize a broader range of alternatives to incarceration while remaining compliant with the sentencing guidelines. Additionally, the report summarizes circuit court sentencing practices and trends in Maryland for fiscal year 2018, 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 finally offering a description of planned activities for 2019. 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, five printed copies of the MSCCSP 2018 Annual Report were submitted to the Library of the Department of Legislative Services. This report 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 Dr. Soulé or me.

Sincerely,

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

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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. Judges are, however, 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 2018, the MSCCSP reviewed new and amended criminal laws from the 2018 Legislative Session, reviewed and classified previously unclassified offenses, made miscellaneous modifications to the Guidelines Offense Table, adopted a revised juvenile delinquency scoring method, adopted a policy statement encouraging use of alternatives to incarceration, clarified offender score instructions for scoring multiple prior convictions from a single criminal event, and clarified language and conducted a descriptive analysis of the multiple victim stacking rule (MVSR). 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). Finally, the MSCCSP held its 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 2018, the MSCCSP received guidelines worksheets for 10,935 sentencing events in the State's circuit courts. A worksheet was submitted for 91% of guidelines-eligible sentencing events. Worksheets for 6,929 of the 10,935 sentencing events were submitted electronically using MAGS. The vast majority of cases were resolved by either an ABA plea agreement (43.1%) or a non-ABA plea agreement (38.3%). Slightly more than three-quarters of guidelines cases were sentenced to incarceration, and the median sentence length among those incarcerated (excluding suspended time) was 1.5 years.

The overall guidelines compliance rate in fiscal year 2018 was 80.6%, 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 bench trial. When considering compliance rates by both crime category and disposition, the highest compliance rate was observed for person offenses adjudicated by a plea agreement. Property offenses resolved by a bench trial had the lowest compliance rate, and the majority of departures in this category were below the guidelines.

Efforts to facilitate the reporting of reasons for departing from the guidelines have helped to address the underreporting of departure reasons. 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 2019. 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 2019 Legislative Session and adopt seriousness categories for new and revised offenses as needed. Additionally, the MSCCSP will expand the grouping of designated corrections options allowing judges to utilize a broader range of alternatives to incarceration while remaining compliant with the sentencing guidelines. The MSCCSP will work with the Local Government Justice Reinvestment Commission to advise on the development and maintenance of the proposed online locator tool for alternatives to incarceration, as well as the proposed gap/needs analysis of available offender programming. Furthermore, the MSCCSP plans to complete the statewide deployment of MAGS when Anne Arundel County, Baltimore City, and Carroll County initiate use of the automated sentencing guidelines system in 2019. Finally, the MSCCSP will 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). The activities described above are just a few of the many tasks that will be completed by the MSCCSP in 2019 to support the consistent, fair, and proportional application of sentencing practice in Maryland.

THE MARYLAND STATE COMMISSION ON CRIMINAL SENTENCING POLICY

Guidelines Background

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 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 sentencing guidelines development process resulted in a 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.¹ Most recently, the Commission approved revisions to rows V and IV of the sentencing matrix for drug offenses, effective July 1, 2016. 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, cases adjudicated in a juvenile court, sentencing hearings in response to a violation of probation, violations of public local laws and municipal ordinances, and cases in which the offender was found not criminally responsible (NCR). 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.

¹ 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

For Cases Originating in Circuit Court	
Guidelines-Eligible	Guidelines-Ineligible
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
	Cases adjudicated in a juvenile court
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	Reconsiderations for offenses other than a crime of violence
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
For Cases Originating in District Court	
Guidelines-Eligible	Guidelines-Ineligible
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 psychological 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 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.

MSCCSP Background

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, Chap. 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, Chap. 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 State and local agencies involved in criminal sentencing to meet these requirements. Criminal justice practitioners complete worksheets electronically or in paper form 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 paper worksheet. The courts are expected to review worksheets to confirm that the guidelines reflected on the worksheets were considered in the respective cases (COMAR 14.22.01.03F(4)). The electronic worksheets are completed and submitted via the Maryland Automated Guidelines System (MAGS), and the paper worksheets are completed by hand, then 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.

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 William E. Koutroumpis, a member of the public, 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, Professor, University of Maryland Department of Criminology and Criminal Justice (CCJS), who serves as the criminal justice/corrections policy expert.

The Chief Judge of the Court of Appeals of Maryland is responsible for three appointments to the Commission. The judicial appointees are 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. 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 (Guidelines Subcommittee). The Honorable Shannon E. Avery chairs the Guidelines Subcommittee, and the other members include Richard A. Finci, Senator Delores G. Kelley, and the Honorable 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.

In 2018, two long-standing members of the MSCCSP completed their terms. Delegate F. Joseph Vallario was a member of the MSCCSP since its inception in 1999, as well as a member of the predecessor Study Commission from 1996 through 1999. Laura L. Martin joined the MSCCSP in 2005 and served on the Sentencing Guidelines Subcommittee since 2010. The MSCCSP is grateful for their dedicated service and our work is much better due to their insights and valuable contributions.

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 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



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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 2018

The MSCCSP held four meetings in 2018. The meetings occurred on May 8, July 10, September 17, and December 11. In addition, the Commission held its annual public comments hearing on December 11. The minutes for all Commission meetings are available on the Commission's website (www.msccsp.org).² The following discussion provides a review of the Commission's activities in 2018.

Review of New and Amended Offenses Passed During the 2018 Legislative Session

The MSCCSP reviewed new criminal laws from the 2018 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 2018 Legislative Session

The MSCCSP reviewed ten new offenses passed during the 2018 Legislative Session and voted for their respective seriousness categories, shown in Table 2, at its July 10 meeting. After promulgating the proposed classifications for these new offenses through the COMAR review process, the MSCCSP adopted these updates effective November 1, 2018.

Table 2. Guidelines Offense and Adopted Seriousness Category Related to New Offenses, 2018 Legislative Session

Legislation	Annotated Code of Maryland	Offense	Statutory Maximum	Adopted Seriousness Category
Chapter 250 HB1302	PS, §5-610(a)(1)	Assault and Other Bodily Woundings—Other Failure to comply with an extreme risk protective order, 1 st offense	90 days	VII
Chapter 250 HB1302	PS, §5-610(a)(2)	Assault and Other Bodily Woundings—Other Failure to comply with an extreme risk protective order, subsequent	1 year	VII

² The minutes for the December 11 meeting will be available on the MSCCSP website after the Commission reviews and approves the minutes at its next meeting, scheduled for May 7, 2019.

Legislation	Annotated Code of Maryland	Offense	Statutory Maximum	Adopted Seriousness Category
Chapter 252 SB707	CR, §4-305.1(a) CR, §4-306(a) (penalty)	Assault Weapons Unlawfully manufacture, possess, sell, etc., a rapid fire trigger activator	3 years	VI
Chapter 252 SB707	CR, §4-306(b)(2)	Assault Weapons Use of rapid fire trigger activator in the commission of a felony or crime of violence, 1 st offense	20 years (MM=5 years)	III
Chapter 252 SB707	CR, §4-306(b)(3)	Assault Weapons Use of rapid fire trigger activator in the commission of a felony or crime of violence, subsequent	20 years (min=10 years)	II
Chapter 365 SB769	CR, §3-709	Extortion and Other Threats Sextortion—causing another to engage in sexual activity or in a visual representation of sexual activity by threatening behavior	10 years	V
Chapter 146 HB1029	CR, §4-203(c)(2)(i)	Handguns—In General Handgun—unlawful wearing, carrying, etc., a loaded handgun, 1 st weapon offense	3 years (min=30 days)	VII
Chapter 146 HB1029	CR, §4-203(c)(3)(ii)2	Handguns—In General Handgun—unlawful wearing, carrying, etc., a loaded handgun, 2 nd weapon offense	10 years (MM=1 year)	III
Chapter 146 HB1029	CR, §4-203(c)(4)(ii)2	Handguns—In General Handgun—unlawful wearing, carrying, etc., a loaded handgun, more than two prior weapon offenses	10 years (MM=3 years)	III
Chapter 500 HB1292	CR, §3-314	Sexual Crimes Sexual contact with person in custody of law enforcement officer	3 years	V

Note: MM = Non-suspendable mandatory minimum penalty

Amended Offenses Passed During the 2018 Legislative Session

The MSCCSP considered amended criminal laws from the 2018 Legislative Session and identified four offenses that required review due to increases in the statutory maximum penalties. Table 3 notes the four relevant amended offenses and the various revisions. The MSCCSP reviewed these offenses and voted for their seriousness categories, shown in Table 3, at its July 10 meeting. After promulgating these proposed offense table updates through the COMAR review process, the MSCCSP adopted these revisions effective November 1, 2018.

Table 3. Guidelines Offenses and Adopted Seriousness Categories Related to Amended Offenses, 2018 Legislative Session

Legislation	Annotated Code of Maryland	Offense	Prior Stat. Max. / Seriousness category	New Stat. Max. / Seriousness category
Chapter 317 SB324	AB, §31-2702	Alcoholic Beverages Selling or providing alcoholic beverages to an individual under the age of 21 in Washington County, 3 rd or subsequent offense	\$500 fine / VII	2 years / VII
Chapters 144 & 145 HB291/SB1137	CR, §9-302(c)(1)	Influencing or Intimidating Judicial Process Induce false testimony (witness or victim intimidation)	5 years / V	10 years / IV
Chapters 144 & 145 HB291/SB1137	CR, §9-303(c)(1)	Influencing or Intimidating Judicial Process Retaliation for testimony, reporting a crime, performance of juror's or officer of the court's duties	5 years / V	10 years / IV
Chapters 144 & 145 HB291/SB1137	CR, §9-305(c)(1)	Influencing or Intimidating Judicial Process Intimidating or corrupting jurors, etc.; obstructing justice	5 years / V	10 years / IV

Miscellaneous Modifications to the Guidelines Offense Table in 2018

In its continued review of seriousness categories for all criminal offenses sentenced in the State's circuit courts, the MSCCSP identified one offense with a maximum incarceration penalty of one year or more, not previously classified by the Commission. The Commission reviewed the one previously unclassified offense, listed in Table 4, during its July 10 meeting and voted for the seriousness category and offense type classification consistent with those for similar offenses. After promulgating this proposed offense table update through the COMAR review process, the MSCCSP adopted this revision effective November 1, 2018.

Table 4. Adopted Seriousness Category for Previously Unclassified Offense

Annotated Code of Maryland	Offense	Statutory Maximum	Offense Type	Adopted Seriousness category
FI, §11-203.1(a) FI, §11-222 (penalty)	Commercial Fraud, Other Providing an unlicensed loan	3 years	Property	VI

Adoption of Revised Juvenile Delinquency Score

Juvenile delinquency is one of four components of a defendant's offender score. Previously included in the juvenile delinquency score was a determination as to whether the defendant had 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 actions are very different and carry different implications concerning the judgment of the juvenile court. Nonetheless, since both actions are classified as "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 recommended 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 collaborated with the Maryland Data Analysis Center (MDAC) at the University of Maryland, College Park on this project. The project proceeded in three phases during 2016 and 2017, culminating in the development and validation of nine alternative juvenile delinquency scoring methods in May 2017. The Commission evaluated each of the nine alternative scoring methods based on three criteria: (1) does the score predict adult recidivism; (2) does the score effectively differentiate between offenders at low-, medium-, and high-risk of recidivism; and (3) does the score perform similarly across racial groups. The Commission identified one alternative method, referred to as *Adjudications #2*, which met all three criteria and performed as well or better than the then-current juvenile delinquency scoring scheme.

At the Commission's September 19 and December 11, 2017, business meetings, the Commission approved revisions to the juvenile delinquency scoring scheme. On January 30, 2018, the MDAC released a full [report](#) detailing the results of the study. After promulgating the proposed revisions through the COMAR review process, the MSCCSP adopted the revisions to the juvenile delinquency score effective July 1, 2018.

Table 5, below, provides a comparison of the juvenile delinquency score before and after the revisions were adopted. Additional clarification to the juvenile delinquency scoring instructions was approved by the Commission, at its July 10, 2018, meeting and made effective November 1, 2018 (see the following section, *Clarifying the Offender Score Instructions for Scoring Multiple Prior Convictions from a Single Criminal Event*, for a detailed explanation of this clarification).

Table 5. Comparison of Previous and Revised Instructions for Calculating the Juvenile Delinquency Score

Previous Juvenile Delinquency Score	Revised Juvenile Delinquency Score (Effective 7/1/2018)
0 points = 23 years or older by the date of offense; OR crime free for 5 years since the last finding of a delinquent act or last adjudication; OR no more than 1 finding of a delinquent act	0 points = 23 years or older by the date of offense; OR zero findings of a delinquent act within 5 years of the date of the most recent instant offense
1 point = Younger than 23 years AND 2 or more findings of a delinquent act or 1 commitment	1 point = Younger than 23 years AND 1 or 2 findings of a delinquent act within 5 years of the date of the most recent instant offense
2 points = Younger than 23 years AND 2 or more commitments	2 points = Younger than 23 years AND 3 or more findings of a delinquent act within 5 years of the date of the most recent instant offense

A *finding of a delinquent act* is defined as a finding of facts sustained at a juvenile adjudicatory hearing, pursuant to the definitions and procedures set forth in Courts and Judicial Proceedings (CJ) Article, §§ 3-8A-01 and 3-8A-18.

When the defense or State can show that a finding of a delinquent act did not result in the youth's adjudication as delinquent at a juvenile disposition hearing, the finding of a delinquent act shall not be scored as a part of the juvenile record. *Adjudication as delinquent* is defined as a finding, subsequent to a disposition hearing, that a child has committed a delinquent act and is in need of or requires treatment, guidance, or rehabilitation, pursuant to the definitions and procedures set forth in CJ, §§ 3-8A-01 and 3-8A-19.

An incarcerable traffic offense as a juvenile should be treated as part of the offender's juvenile record.

Adoption of Policy Statement Encouraging Use of Alternatives to Incarceration

The Justice Reinvestment Act (JRA) (Senate Bill 1005/Ch. 515, Sec. 8, 2016) required the MSCCSP to study how more alternatives to incarceration may be included in the sentencing guidelines and to submit a report of the findings and recommendations to the Justice Reinvestment Oversight Board, Governor, and General Assembly by January 1, 2018. The MSCCSP's study of alternatives included a review of how corrections options are currently included in the sentencing guidelines, two resources to help identify evidence-based alternatives to incarceration, an analysis of how other states incorporate alternatives into their sentencing guidelines, an inventory of alternatives available in each jurisdiction in Maryland, and

seven recommendations as to future actions for the MSCCSP and other state and local agencies (the full [study report](#) is available on the MSCCSP website). Among the study's recommendations is that the MSCCSP adopt a policy statement encouraging the use of alternatives to incarceration, where appropriate.

At its business meeting on December 11, 2017, the MSCCSP voted to adopt the following policy statement and to include the policy statement in the preface of the Maryland Sentencing Guidelines Manual (MSGM).

The MSCCSP encourages judges to consider at sentencing evidence-based or innovative alternatives to incarceration that are appropriate for defendants based on their specific risks and needs. The mandate of Maryland's Justice Reinvestment Act (JRA) (Chapter 515 of 2016) that the Division of Parole and Probation administer risk-needs assessments on individuals under their supervision and develop individualized case plans that take into consideration evidence-based or innovative programs, highlights the value the State places on the use of alternatives for suitable offenders.³ This approach is also consistent with research on the effectiveness of alternatives to incarceration relative to imprisonment that has overwhelmingly concluded that imprisonment does not reduce re-offending relative to community sanctions (Villettaz, Gillieron, and Killias, 2015).⁴ The research findings, when combined with the collateral consequences experienced by incarcerated individuals and their family members (Collateral Consequences Workgroup, 2016),⁵ suggest there is a potential public safety and community benefit to limiting exposure to incarceration, especially for offenders who are a low-risk to recidivate.

Therefore, in accordance with the JRA and criminological research, the MSCCSP recommends that judges consider utilizing alternatives to incarceration at

³ Evidence-based programs and practices are programs proven by scientific research to reliably produce reductions in recidivism (JRA 2016). Innovative programs and practices are programs that do not meet the higher standards of the evidence-based practices, but preliminary research or data indicate they will reduce the likelihood of offender recidivism (JRA 2016).

⁴ Villettaz P., Gillieron G., and Killias M. *The Effects on Re-offending of Custodial vs. Non-custodial Sanctions: An Updated Systematic Review of the State of Knowledge*. Campbell Systematic Reviews 2015:1. DOI: 10.4073/csr.2015.1

⁵ Collateral Consequences Workgroup (2016). *The Final Report of the Collateral Consequences Workgroup*. Retrieved from: <https://goccp.maryland.gov/wp-content/uploads/collateral-consequences-final-report-2016.pdf>

sentencing, provided that such alternatives are appropriate based on the defendant's specific risks and needs.⁶ For chemically dependent offenders, the MSCCSP encourages treatment in lieu of incarceration.

This statement encourages judges to consider at sentencing evidence-based or innovative alternatives to incarceration that are appropriate for defendants based on their specific risks and needs. The policy statement is consistent with the MSCCSP's 2001 decision to support the use of specified alternatives by deeming sentences to corrections options (such as home detention, drug court, and Health General Article, § 8-507 commitments) as guidelines 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. The policy statement, in conjunction with the corrections options compliance rule, demonstrates the MSCCSP's interest in promoting alternatives to incarceration, where appropriate. The policy statement was added to the MSGM effective April 1, 2018.

Clarifying the Offender Score Instructions for Scoring Multiple Prior Convictions from a Single Criminal Event

In 2017, a criminal defense attorney contacted the MSCCSP with a concern about confusing language in the MSGM. Specifically, the attorney raised concerns about inconsistent wording of the prior adult criminal record instructions for multiple prior convictions relating to a single criminal event (MSGM, Chapter 7). In one section of the MSGM, users were instructed to "include all adjudications preceding the current sentencing event" in the computation of the defendant's prior record score, while in a subsequent section of the MSGM, users were instructed to "score only the offense with the highest seriousness category" when there were multiple prior convictions relating to a single criminal event.

The Commission identified similarly confusing language in the juvenile delinquency score instructions, where users were instructed to score findings of a delinquent act "the same as convictions would be for an adult; that is, there may be more than one as part of a single event." Individuals may have read this as instructing them to count, both for adults and juveniles, more than one conviction arising from a single criminal event, contrary to language contained in the prior adult criminal record instructions.

⁶ See MSGM 13.7 for an explanation of guidelines compliance with respect corrections options, and see MSGM 2 for the definition of corrections options.

To provide greater clarity to users and better reflect the Commission's intent, at its May 10, 2018, meeting, the Commission voted to revise the language for the prior adult criminal record instructions for multiple prior convictions relating to a single criminal event to clearly indicate that, in a criminal event involving multiple offenses, only the most serious offense shall count towards the defendant's prior record score. Additionally, the Commission voted to revise the language for the juvenile delinquency score instructions for multiple offenses relating to a prior adjudication to use terminology consistent with that of the juvenile court and provide consistency with the language for the adult prior record. The revised instructions for the juvenile delinquency score indicate that only one finding of a delinquent act, per adjudicatory hearing shall count towards the defendant's score. After promulgating the proposed revisions through the COMAR review process, the MSCCSP adopted the revisions to the prior record score and juvenile delinquency score instructions effective November 1, 2018.

Clarifying Language and Descriptive Analysis of the Multiple Victim Stacking Rule

The multiple victim stacking rule (MVSR), adopted by the Commission in 2003, is intended to provide for an enhanced sentencing guidelines range in scenarios where multiple victims are involved. Historically, the rule has often been interpreted by practitioners and staff as applicable only in sentencing events that contain a single criminal event, and not applicable in sentencing events where multiple criminal events are sentenced at the same time, in front of the same judge. With this interpretation, the particularly serious nature of a multiple-victim criminal event cannot be accounted for when multiple criminal events are sentenced together, thereby providing the defendant in such a scenario with a seemingly unintended advantage. A defendant who engages in more criminal conduct, leading to multiple criminal events, could have a lower calculated guidelines range than a defendant who is sentenced on only one criminal event.

In 2018, an assistant state's attorney (ASA) contacted the MSCCSP regarding the MVSR and the unintended consequence of not applying the rule to sentencing events that contain multiple criminal events. The Commission considered the existing language in the MSGM and COMAR regarding the rule and concluded that the language does not preclude the MVSR from being applied in sentencing events involving multiple criminal events. The Commission also agreed that the language should be revised to provide greater clarity to practitioners. To more clearly indicate that the MVSR may be applied in sentencing events involving multiple criminal events and better convey the rule's original intent, the MSCCSP voted, at its May 8, 2018, business

meeting to clarify the MVSR instructions. After promulgating the May 8, 2018, proposed revisions through the COMAR review process, the MSCCSP adopted the revisions to clarify the MVSR instructions effective November 1, 2018.

Following its vote to clarify the instructions for the MVSR, the MSCCSP instructed staff, at its July 10, 2018, business meeting, to complete a descriptive analysis of the application of the MVSR throughout the State of Maryland. At its, September 17, 2018, business meeting, staff presented the results of the analysis. This descriptive analysis examined five years of sentencing guidelines data (calendar years 2013 through 2017). Staff presented five main findings from the analysis.

First, the MVSR was applied to less than one percent of guidelines cases sentenced in calendar years 2013 through 2017. Second, the number of victims involved in MVSR cases ranged from two to 15, with 71% of MVSR cases involving two victims and 29% involving three or more victims. Third, the majority of both MVSR and non-MVSR cases were guidelines compliant. However, when departures occurred, they were more often above the guidelines in MVSR cases and below the guidelines in non-MVSR cases. Fourth, among cases that received a guidelines-applicable sentence within the recommended guidelines range, the majority of both MVSR and non-MVSR cases received a sentence towards the bottom of the guidelines range, though MVSR cases were more likely than non-MVSR cases to receive a sentence towards the top of the guidelines range. Finally, an examination of the distribution of sentences within their applicable guidelines for non-MVSR and MVSR cases illustrated that judges are utilizing the wider ranges provided in the MVSR cases. Given the results of the descriptive analysis, the Commission concluded that there was no statistical basis to revise the MVSR instructions further.

Review of Sentencing Guidelines-Eligibility for Adult Offenders Adjudicated in Juvenile Court

In 2018, an Assistant State's Attorney contacted the MSCCSP to inquire whether a sentencing guidelines worksheet should be completed for an adult being adjudicated in juvenile court for a violation of the State's compulsory public school attendance laws (Education Article (ED), § 7-301(e)).⁷ The instructions contained in the MSGM state that a guidelines worksheet shall be

⁷ Pursuant to Courts and Judicial Proceedings Article (CJ), §§ 3-803(c) and 3-8A-03, an adult may be adjudicated in juvenile court for contributing to conditions causing a child to be alleged delinquent, in need of assistance or supervision, or failure to send their child who is over the age of 5 and under the age of 16 to school.

completed for all incarcerable offenses originally prosecuted in a circuit court. Each of the 24 jurisdictions in Maryland has a circuit court and, within the circuit court, a juvenile court. Without further clarification, the language contained in the MSGM may have been interpreted to instruct that a worksheet shall be completed for an adult awaiting adjudication in juvenile court for a guidelines-eligible offense.

Given the atypical nature of cases involving an adult adjudicated in juvenile court and the Commission's intent that the guidelines apply to offenders sentenced in adult circuit courts, at its September 17, 2018, business meeting, the Commission voted to exclude from guidelines eligibility cases involving an adult adjudicated in juvenile court. The proposed revisions have been submitted to COMAR for promulgation through the review process, with an expected implementation date of March 1, 2019.

Updates and Expansion of Guidelines-Compliant Alternatives to Incarceration

Pursuant to the MSGM, Chapter 13.7, the MSCCSP shall deem a sentence within the guidelines range if a judge imposes a sentence of corrections options and the defendant's:

- (1) Initial sentence plus any suspended sentence falls within or above the overall guidelines range; and
- (2) Current sentence or sentences and any pending charges do not include a violation of:
 - a) A crime of violence under CR, § 14-101;
 - b) Sexual child abuse under CR, § 3-602;
 - c) Escape;
 - d) A law of the United States or of any other state or the District of Columbia similar to § C(2)(a)—(c) of COMAR 14.22.01.17.

The MSGM, Chapter 2, defines *corrections options* as:

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

- A sentence, with required substance abuse treatment, for the possession, administration, obtainment, etc. of controlled dangerous substances (CDS) currently outlined in Criminal Law Article (CR), § 5-601(c) and pursuant to CR, § 5-601(e)(3).
- Corrections options include programs established by the State Division of Correction, if the program meets the Commission's criteria, as described above.

Defining certain alternatives to incarceration as *corrections options* is important because as noted previously, a judge may impose these specific alternatives in lieu of an imprisonment sentence while remaining compliant with the sentencing guidelines. At its December 11, 2018, business meeting, the MSCCSP voted to revise and expand the grouping of designated corrections options allowing judges to utilize a broader range of alternatives to incarceration while remaining compliant with the sentencing guidelines. Specifically, the MSCCSP adopted the following four revisions, elaborated upon below, to the definition of corrections options:

- (1) Add other problem-solving courts, in addition to drug court, to the definition of corrections options.
- (2) Include work release and weekend (or other discontinuous) incarceration in the definition of corrections options.
- (3) Remove High Intensity Drug Trafficking Areas (HIDTA) substance abuse treatment program from the definition of corrections options.
- (4) Revise the language in the final bullet point, referring to an "other" category of corrections options, to refer to other programs established by the Department of Public Safety and Correctional Services (DPSCS) and/or local correctional agencies.

Add other problem-solving courts, in addition to drug court, to the definition of

corrections options. The current definition of *corrections options* includes one type of problem-solving court available in Maryland, drug courts. Drug courts involve enhanced supervision compared to standard probation, substance abuse treatment, are evidence-based, and have been found to reduce recidivism and improve outcomes for participants when compared to traditional criminal courts. Maryland offers additional problem-solving courts in select jurisdictions, including family/dependency drug court, DUI/drug court, mental health court, truancy court, veterans court, re-entry court, and Back on Track. Though not included in the current definition of corrections options, these additional problem-solving courts, like drug court, generally involve close supervision, are evidence-based, and have been found to improve outcomes for participants when compared to traditional criminal courts. Given their similarity to drug court and the body of evidence that generally supports the effectiveness of other problem-solving courts, the MSCCSP at its December 11, 2018, meeting, agreed to add to the definition

of Commission-approved corrections options a sentence to any Maryland problem-solving court, as defined by the Administrative Office of the Courts' (AOC) Office of Problem Solving Courts.

Include work release and weekend (or other discontinuous) incarceration in the definition of corrections options.

Work release is available in all 24 Maryland jurisdictions. Work release programs vary in their content but generally provide opportunities for inmates to build skills that will assist in the reentry process. Evaluations of work release programs in Maryland are scarce, but the Montgomery County's Pre-Release Center, which includes a work release component, reported lower recidivism rates compared to those who did not participate in the program. A larger evaluation of the work release program under Florida's Department of Corrections found significant differences between those who graduated from the program and those who did not participate. Program completers were significantly less likely to be arrested or convicted of a new felony within the three-year follow-up timeframe. This group also had a significantly higher rate of employment over the follow-up period. An evaluation of work release programs in Minnesota reached similar findings and also found that program completers worked more hours and earned higher wages than inmates who did not participate in the program.

Discontinuous incarceration is also offered in all Maryland jurisdictions. The most common form of discontinuous incarceration, weekend incarceration, involves a defendant reporting to a local detention facility for one or more weekends, defined as Friday evening through Sunday. In some instances, due to employment or other obligations, a defendant may be ordered to serve his or her sentence on weekdays, for instance Monday to Wednesday. Weekend or other discontinuous incarceration is generally offered to defendants as an alternative to straight jail time to allow the defendant to maintain employment and parenting responsibilities in the community.

Both work release and weekend (or other discontinuous) incarceration involve a term of confinement thereby offering greater supervision than standard probation, and evidence shows that work release, similar to other current *corrections options*, may reduce recidivism and improve outcomes for participants. Therefore, the MSCCSP decided to add to the definition of corrections options work release and weekend (or other discontinuous) incarceration.

Remove HIDTA substance abuse treatment program from the definition of corrections options.

HIDTA is a grant program administered by the Office of National Drug Control Policy that provides assistance to federal, state, local, and tribal law enforcement agencies. HIDTA grants include funding and other forms of assistance, such as intelligence and information-

sharing resources provided by the Drug Enforcement Agency. The HIDTA program provides funding for drug courts in Anne Arundel County, Prince George's County, and Baltimore City, and jurisdictions outside Maryland, but is not directly involved in the provision of substance abuse treatment programs. Given that the existing HIDTA-funded substance abuse treatment programs in Maryland include only select drug courts, participation in which is defined as a corrections option under the current definition, the MSCCSP agreed to remove from the definition of corrections options HIDTA substance abuse treatment programs, as their current inclusion is just a secondary way to indicate drug court.

Revise the language in the final bullet point, referring to an “other” category of corrections options, to refer to other programs established by the Department of Public Safety and Correctional Services (DPSCS) and/or local correctional agencies. The current definition of corrections options includes corrections options programs, similar to home detention or inpatient treatment, established under law involving terms and conditions that constitute the equivalent of confinement, and programs established by the State Division of Correction, if the program meets the Commission's criteria. This language was borrowed from the definition of “custodial confinement” outlined in Senate Bill 91/Chapter 356 (2001). Inpatient/residential substance abuse treatment and inpatient/residential mental health treatment are commonly cited examples of other corrections options programs that meet the criteria provided by the Commission.

To provide for better data collection and increased clarity, the MSCCSP agreed to explicitly note residential treatment in the definition of corrections options. Additionally, the MSCCSP agreed to revise the final bullet point in the definition to read, “Corrections options include programs established by the *Department of Public Safety and Correctional Services (DPSCS) and/or local correctional agencies*, if the program meets the Commission's criteria, as described above” (emphasis added), rather than “programs established by the State Division of Correction.”

After promulgating these four proposed revisions through the COMAR review process, the MSCCSP expects to adopt these updates effective July 1, 2019. The MSCCSP believes these revisions will help establish a more clearly defined boundary for what qualifies as a corrections option. The MSCCSP staff can then work to better inform the judiciary and criminal justice practitioners about how judges may impose these specific alternatives in lieu of an imprisonment sentence, while remaining compliant with the sentencing guidelines.

Revisions to the Sentencing Guidelines Worksheet

The MSCCSP adopted several revisions to the sentencing guidelines worksheet in 2018.

Victim participation. First, following feedback from practitioners, effective February 1, 2018, the MSCCSP revised the Victim Participation question on the worksheet to read “Victim Participation,” rather than “Victim Non-Participation.” The MSCCSP found that phrasing the question in the affirmative, rather than the negative, provides greater clarity to practitioners.

At its December 11, 2018, business meeting, the Commission voted to adopt four additional revisions to the Maryland sentencing guidelines worksheet.

Separate Reconsideration and Review from disposition types. The first revision adopted at the December 11, 2018, business meeting is to separate *Reconsideration* and *Review* from the disposition types and to indicate in parentheses the text, “crime of violence only” or “COVs only” after the text *Reconsideration*. Currently the disposition section of the worksheet lists several plea and trial disposition types as well as *Reconsideration* and *Review*, though the latter two are not technically disposition types. Separating out *Reconsideration* and *Review* allows users to indicate both how the case was disposed (plea or trial) as well as whether or not the sentencing was a reconsideration or review. Currently these responses are mutually exclusive. The MSCCSP identified a number of reconsideration and review cases that were recorded on the worksheet as pleas or trials (rather than as reconsiderations or reviews). This is problematic because CP, § 6-209 requires that the Commission review changes in original sentences that have occurred because of reconsiderations of sentences imposed under § 14–101 of the Criminal Law Article. The proposed revisions will enable the MSCCSP to better identify such cases.

Modify racial categories. The second revision to the guidelines worksheet is to modify the racial categories so that they mirror those required by State Government (SG) Article, § 10-603 and are, therefore, consistent with State law. SG, § 10-603 specifies that forms requiring the identification of individuals by race include the following racial categories:

- American Indian or Alaska Native;
- Asian;
- Black or African American;
- Native Hawaiian or other Pacific Islander; and
- White.

While the worksheet's current categories are similar to those of SG, § 10-603, minor differences exist. The revisions are consistent with the racial categories specified in SG, § 10-603 and provide for multiracial responses.

Specify other corrections options programs and collect additional data on other alternatives to incarceration.

The third revision to the guidelines worksheet is to specify the "other" corrections options programs, and collect additional data on sentences utilizing other alternatives to incarceration. The current and previous versions of the worksheet capture whether the offender's sentence included "drug court" and/or an "other" corrections options program, but do not capture the nature of the "other" program. The revisions to the worksheet specify the "other" corrections options, capture other alternatives to incarceration, and allow for multiple selections. The revised corrections options field will provide the following list of options:

- Drug court;
- Other problem-solving court (specify);
- Home detention;
- Suspended sentence per CR, § 5-601(e);
- HG, § 8-507 order;
- Work release;
- Weekend or other discontinuous incarceration;
- Inpatient substance abuse treatment;
- Inpatient mental health treatment; and
- Other (explain).

Additionally, the other alternatives to incarceration field will provide the following list of other alternatives:

- Outpatient substance abuse treatment,
- Outpatient mental health treatment, and
- Other (explain).

These revisions will allow the Commission to collect more detailed data that, in combination with recidivism data, may be used to identify effective and promising alternatives to incarceration and to help inform future sentencing decisions.

Remove *Subsequent Offender Filed* and *Restitution Requested* fields. The fourth revision to the guidelines worksheet is to remove the *Subsequent Offender Filed* and *Restitution*

Requested fields. The current worksheet provides space for sentences for three convicted offenses and within each of those three sections includes the following Yes/No items:

- Subsequent Offender Filed,
- Subsequent Offender Proven,
- Restitution Requested, and
- Restitution Proven.

The revisions will remove the *Subsequent Offender Filed* and *Restitution Requested* fields from each of the three convicted offenses sections. Worksheet preparers rarely complete these two fields, and the fields offer little analytic value. Additionally, removing these fields provides a counter-balance to the addition of items to collect more information regarding corrections options and other alternatives to incarceration.

The MSCCSP will release the updated worksheet (version 8.0) to reflect these four revisions on or about July 1, 2019.

Training and Education

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, instructions for completing the offender and offense scores, advice for avoiding common mistakes/omissions, several examples of more complicated sentencing guidelines scenarios, and a demonstration of the Guidelines Calculator Tool (GLCT). The MSCCSP also provides on-site orientation sessions in advance of each jurisdiction's implementation of MAGS. In 2018, the MSCCSP provided 13 guidelines trainings/MAGS orientations attended by approximately 335 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, met with the circuit court judges in eight of Maryland's 24 jurisdictions (namely, Anne Arundel County, Baltimore City, Baltimore County, Carroll County, Harford County, Howard County, Montgomery County and Prince George's County). The meetings provided an opportunity for the MSCCSP to review sentencing guidelines-related data with the individual jurisdictions, offer status reports on

guidelines worksheet submission rates, and receive feedback from the judges on areas of interest or concern regarding the activities of the MSCCSP.

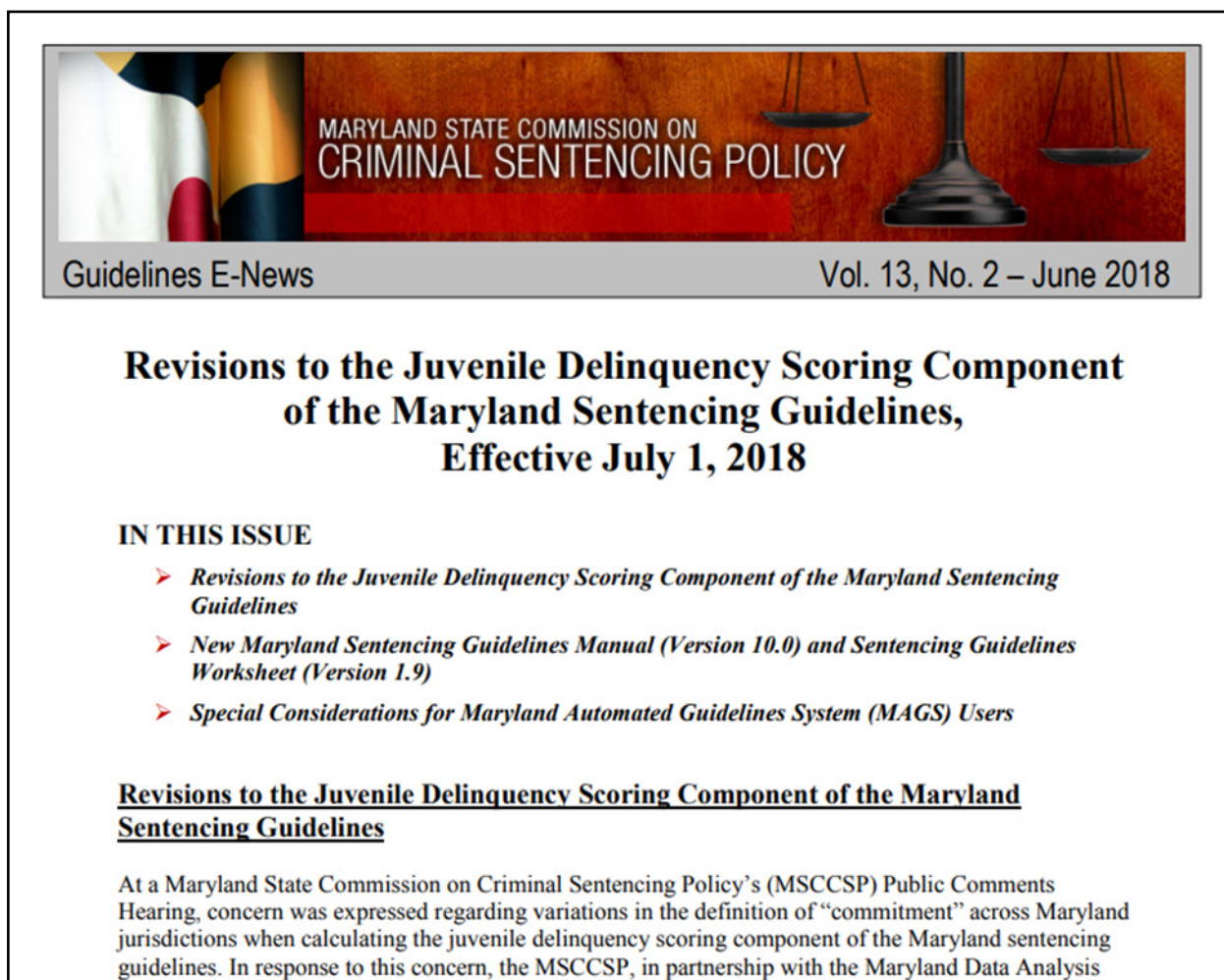
The MSCCSP also maintains a website (www.msccsp.org) that it updates regularly to provide materials for criminal justice practitioners regarding the application of the guidelines, including text-searchable and print-friendly copies of the most recent version of the MSGM and the Guidelines Offense Table, an instructional manual and training videos for MAGS, 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.

The MSCCSP released three updated versions of the MSGM in 2018. MSGM 9.2 (released April 1, 2018) includes a policy statement that encourages judges to consider at sentencing evidence-based or innovative alternatives to incarceration that are appropriate for defendants based on their specific risks and needs; and an updated Guidelines Offense Table to reflect the addition of CJIS codes for offenses amended by the JRA and for new and amended offenses passed during the 2017 Legislative Session. MSGM 10.0 (released June 1, 2018) includes revisions to the juvenile delinquency scoring component of the offender score approved by the MSCCSP and adopted in COMAR effective July 1, 2018; updated sample cases; a revision to one of the victim information items that involved changing "Victim Non-participation" to "Victim participation" following feedback from practitioners to phrase the item in the affirmative; and an updated Guidelines Offense Table to reflect minor edits and the addition of a previously unclassified offense (Economic Development (EC), § 10-439--Purchase, sell, transfer, or obtain stem cell material donated in accordance with EC, § 10-438 for financial gain or advantage). MSGM 10.1 (released on November 5, 2018) includes clarified instructions for scoring multiple prior convictions from a single criminal event; clarified instructions for applying the multiple victim stacking rule in sentencing events involving multiple criminal events; and an updated Guidelines Offense Table to reflect classification of new and amended offenses passed during the 2018 Legislative Session, as well as classification of one previously unclassified offense (Financial Institutions (FI), §11-203.1(a)--Providing an unlicensed loan).

In addition to providing training and education programs, the MSCCSP staff is available via phone (301-403-4165) and e-mail (msccsp@umd.edu) from 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 2018, 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 1) is a periodic report delivered electronically to criminal justice practitioners throughout Maryland. The *Guidelines E-News* provides information on changes and/or additions to the guidelines and serves as an information source on sentencing policy decisions. For example, the [June 2018 issue](#) highlighted revisions to the juvenile delinquency scoring component of the Maryland Sentencing Guidelines.

Image 1. Guidelines E-News, Vol.13, Issue No. 2

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 2018, the Commission responded to approximately 35 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 2018, the MSCCSP provided sentencing information and/or data to several agencies including, but not limited to, the Maryland Department of Juvenile Services, the Governor's Office of Crime Control Prevention (GOCCP), the Office of the Public Defender, the Maryland Department of Legislative Services, the Maryland Senate Judicial Proceedings Committee, the Justice Reinvestment Oversight Board, 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.

The Commission also regularly responds 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 2018, the Commission provided information for more than 70 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 to exchange information, ideas, and experiences on issues related to sentencing policies, guidelines, and other criminal justice related activities. In May 2018, MSCCSP Chair Glenn Harrell, Jr. and the MSCCSP Executive Director, Dr. David Soulé spoke at the Justice Reinvestment Oversight Board meeting regarding MSCCSP activities related to the Justice Reinvestment Act. Dr. Soulé also presented at the Maryland Judicial Conference in May 2018, speaking about the MSCCSP report on alternatives to incarceration. Finally, Dr. Soulé was invited to participate in a workshop comparing guidelines systems at the annual National Association of Sentencing Commissions (NASC) conference, held in August 2018.

Data Collection, Oversight, and Verification

The MSCCSP staff is responsible for compiling and maintaining the Maryland sentencing guidelines database, which contains data submitted via hard-copy paper sentencing guidelines worksheets, as well as data from guidelines worksheets submitted via MAGS. 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.

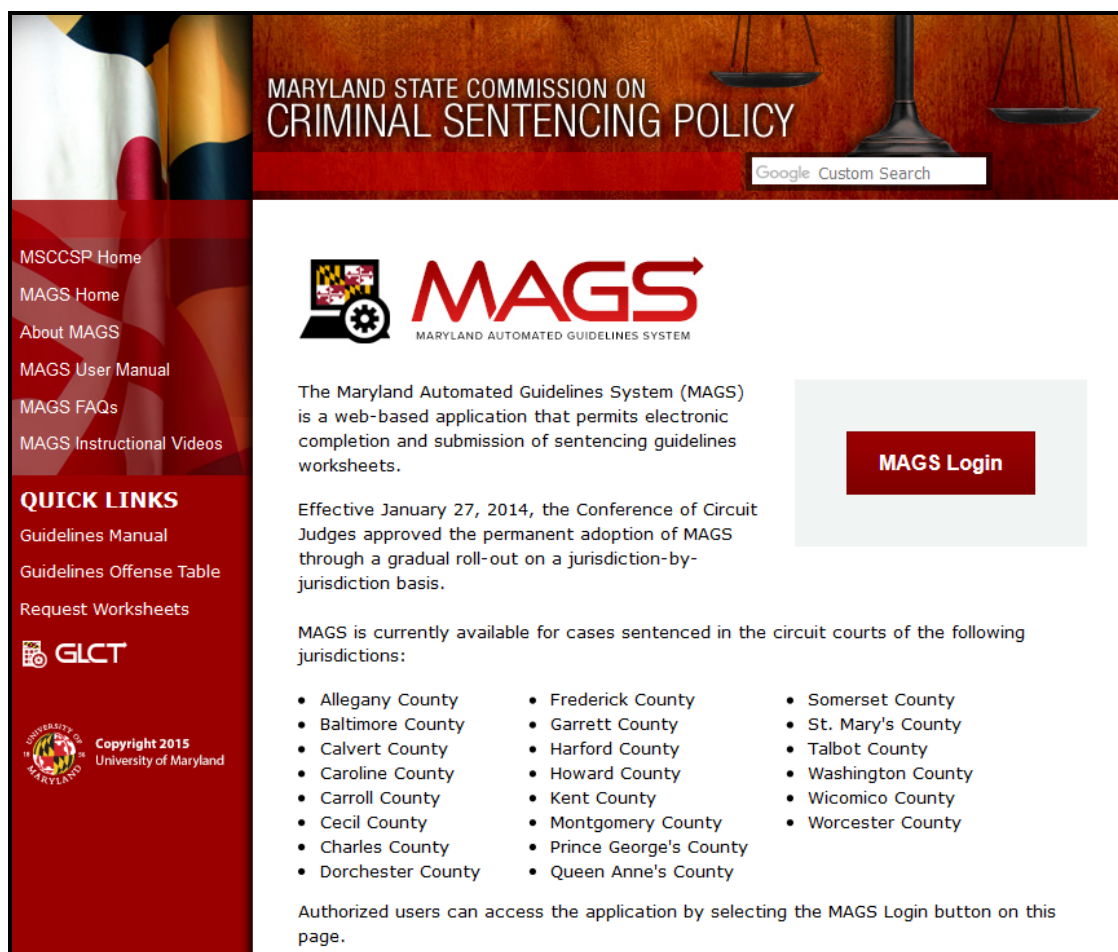
Maryland Automated Guidelines System (MAGS)

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, Office of the Maryland State Prosecutor, 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 sentencing guidelines calculation, reduction in sentencing guidelines calculation errors, improvement in the accuracy and completeness of data, more timely and accurate assessment of sentencing policy and practice, and offering a mechanism to monitor completion and submission of guidelines worksheets. MAGS users are encouraged to contact the MSCCSP staff about their concerns, questions, or suggestion by phone (301-403-2707) or via e-mail (msccsp@umd.edu).

MAGS was first deployed as a pilot project in the Montgomery County Circuit Court 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 2018, MAGS was available for use in 21 of the 24 circuit courts, accounting for approximately 72% of sentencing guidelines worksheets received by the MSCCSP. Appendix F provides a MAGS deployment schedule. MAGS is accessible from the MSCCSP website at: www.msccsp.org/MAGS (see Image 2).

Image 2. MAGS page of MSCCSP website



The key tasks completed in 2018 to continue the development and deployment of MAGS are summarized below.

January 1, 2018: The Dorchester and Somerset County Circuit Courts began use of MAGS to initiate, edit, and submit all official sentencing guidelines worksheets.

February 1, 2018: The MSCCSP released an updated version of MAGS (6.0) for immediate use. MAGS 6.0 was developed using funds from a one-year Byrne Justice Assistance Grant (BJAG), awarded to the MSCCSP by the GOCCP in 2017, and with programming assistance

provided by the DPSCS. MAGS 6.0 provided several new features. The following is a summary of the most significant changes to MAGS.

- Per the MSCCSP's existing rule, sentences are now flagged as guidelines-compliant if they include a sentence to a corrections options program and if the defendant's initial sentence plus any suspended sentence falls within or above the overall guidelines range, and the defendant's current sentencing event and any pending charges do not include a crime of violence under Criminal Law Article (CR), § 14-101, sexual child abuse under CR, § 3-602, escape, or a law of the United States or of any other state or the District of Columbia similar to the aforementioned offenses.
- The Guidelines Offense Table and list of most common offenses table were updated to provide additional search options.
- For those jurisdictions utilizing the Maryland Electronic Courts system (MDEC) as of February 1, 2018, the Case # field in MAGS now pre-populates with the MDEC prefix corresponding to the user's jurisdiction.
- The language and information icon under Sentence Served on the *Offense Sentence* screen was revised to ask whether the sentence is to be served consecutive to any other counts in the current *sentencing event*, rather than *case*. This revision was in recognition that multiple case numbers may be sentenced together at one sentencing event.
- The *Victim Information* tab was relocated to immediately after the *List of Offenses* tab. As the state's attorney or Parole and Probation agent who initiates the worksheet is often in the best position to answer victim information questions, the *Victim Information* tab was relocated to immediately follow the *Offender Information*, *Offender Score*, and *List of Offenses* tabs that are also typically completed by the state's attorney or Parole and Probation agent.
- The Victim Participation question was revised to provide greater clarity to practitioners.
- The question regarding No Contact Ordered was moved from the *Victim Information* tab to the *GLS/Overall Sentence* tab. As no contact orders are often not made until the defendant is sentenced, the judge or judge's designee entering the sentence information is in the best position to answer this question. Moving this question to the GLS/Overall Sentence screen facilitates easier access for judges and their designees.

April 1, 2018: The Wicomico County Circuit Court began use of MAGS to initiate, edit, and submit all official sentencing guidelines worksheets.

July 1, 2018: The Worcester County Circuit Court began use of MAGS to initiate, edit, and submit all official sentencing guidelines worksheets.

July 1, 2018: The MSCCSP released an updated version of MAGS (7.0) for immediate use. MAGS 7.0 provided one primary new feature. The instructions for the juvenile delinquency scoring component of the offender score were updated to reflect the revised juvenile delinquency score, adopted effective July 1, 2018.

October 1, 2018: The Howard County Circuit Court began use of MAGS to initiate, edit, and submit all official sentencing guidelines worksheets.

In calendar year 2018, there were approximately 33,000 MAGS user logins, an increase of 8% from calendar year 2017 (see Figure 1 and Figure 2). The majority (92%) of the user logins originated from either the State's Attorney's Office or the circuit courts. Additionally, the GLCT was accessed nearly 7,500 times in calendar year 2018, a 50% increase from calendar year 2017.

Figure 1. MAGS and GLCT User Logins, Calendar Years 2015 through 2018

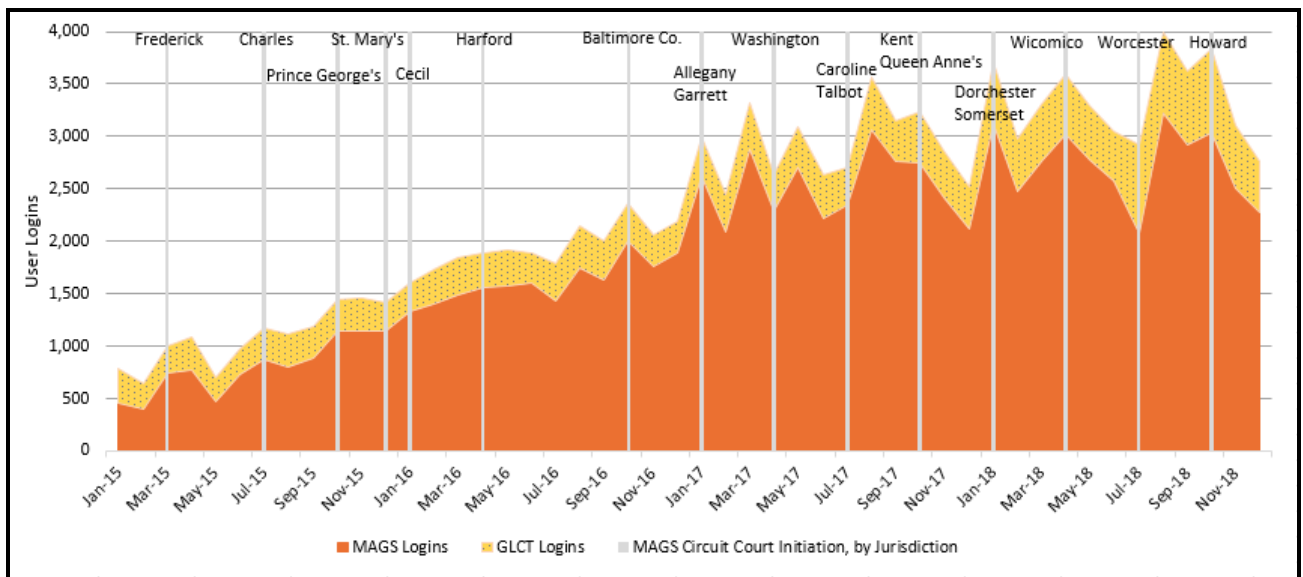
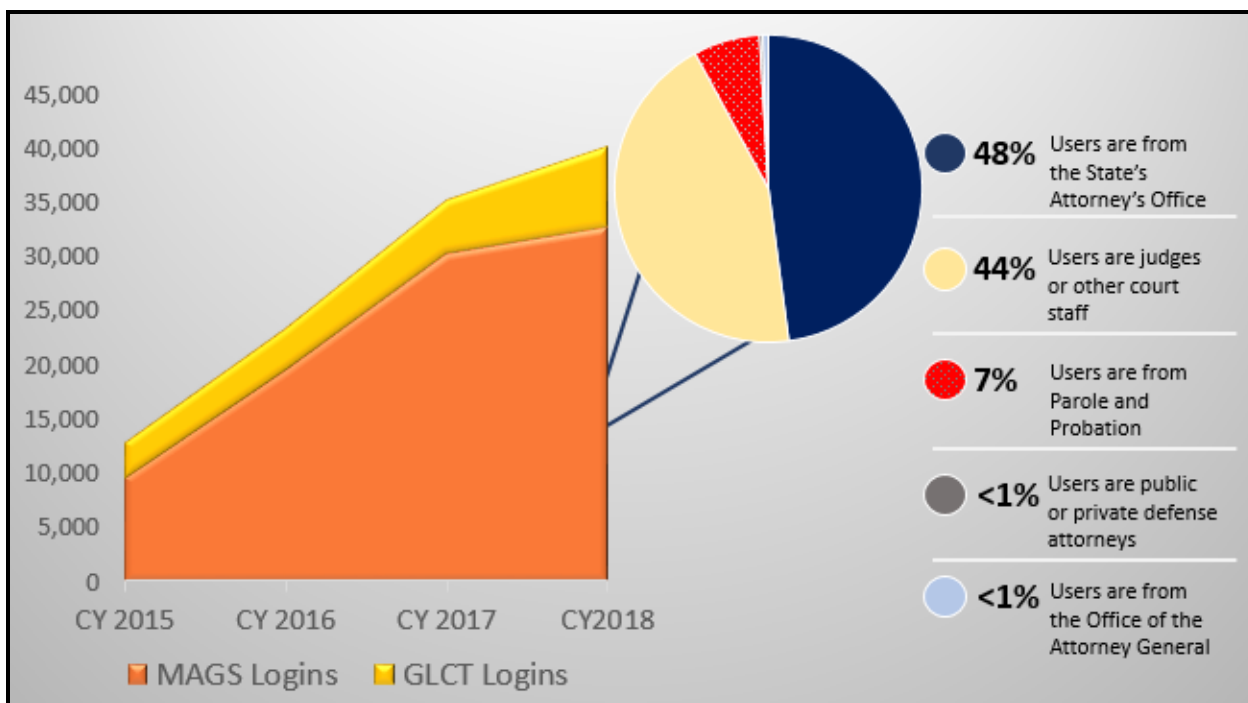


Figure 2. MAGS User Logins, by User Type, Calendar Years 2015 through 2018

The GLCT (see Image 3) 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 additional jurisdictions begin using MAGS, it is expected that use of the GLCT will decrease. Figure 1 indicates that users routinely use 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 3. Guidelines Calculator Tool (GLCT)

GLCT
GUIDELINES CALCULATOR TOOL

Last Name: SAMPLE First Name: JOE SID:

Offender Information Offender Score **List of Offenses**

Maryland Guidelines Calculator Tool Previous

Add Offense

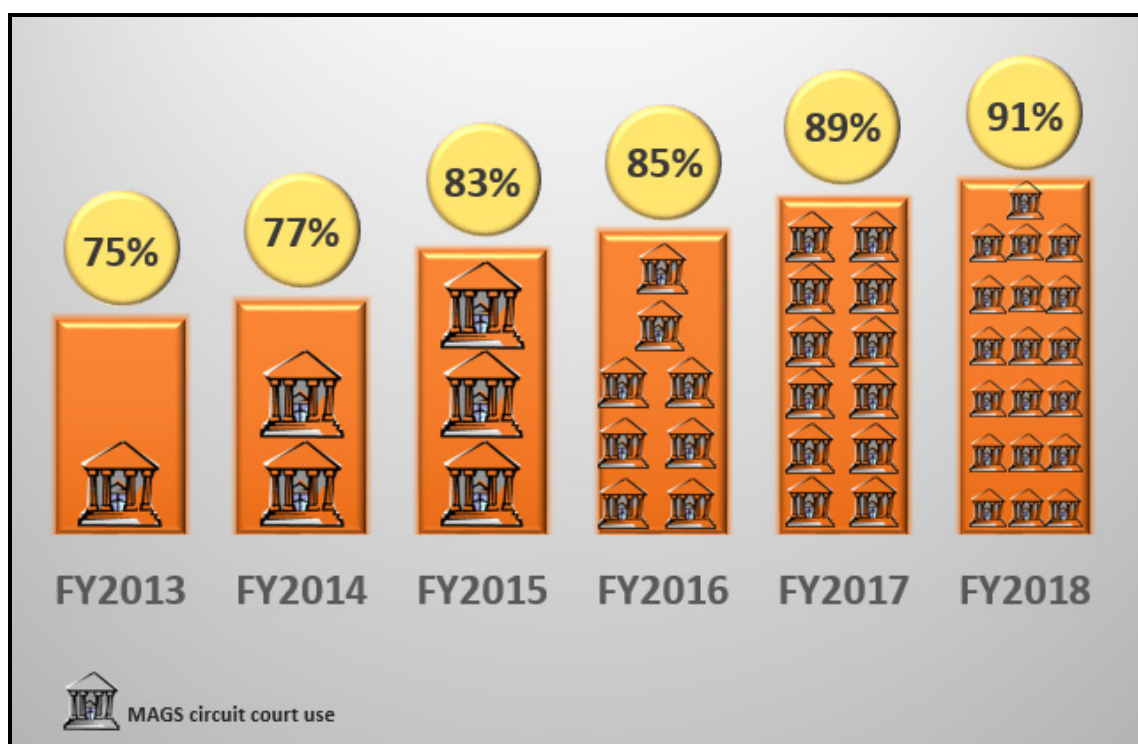
Event #	Count	Offense Description	Guidelines	Case #	Select
1	1	Burglary, 4th degree	6M to 1Y		

Overall Guidelines Range: 6M To 1Y

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 limited case-level information for all guidelines-eligible cases sentenced in circuit courts during the previous month.⁸ The Montgomery County Circuit Court and 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 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. The status reports provide worksheet completion updates for the two most recent months. Since the MSCCSP began providing individual MAGS jurisdictions with feedback regarding their worksheet submission rates, the worksheet submission rate for Maryland has increased from 75% in fiscal year 2013 to 91% in fiscal year 2018 (see Figure 3). The MSCCSP anticipates that, in providing individual jurisdictions with feedback, worksheet submission rates will continue to increase thus improving the completeness and reliability of the MSCCSP's data.

⁸ For a complete description of guidelines-eligible cases, see *The Present Sentencing Guidelines* section of this report, starting at page 2.

Figure 3. Worksheet Submission Rates, by MAGS Circuit Court Usage, Fiscal Years 2013 through 2018



Public Comments Hearing

The MSCCSP recognizes the importance of providing a forum for the public to discuss sentencing-related issues. As such, the MSCCSP holds an annual public comments hearing. The 2018 public comments hearing occurred on December 11. The MSCCSP distributed a hearing invitation to key criminal justice 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.

Two Maryland residents registered to speak and submitted joint written testimony in advance of the meeting, but did not attend. Their testimony addressed their concern with the Maryland Governor's pardon process, specifically the requirement that individuals convicted of certain non-violent offenses, including controlled dangerous substance violations, must wait 20 years from the end of their sentence to apply for a pardon. The minutes for the public comments hearing contain a summary of the provided testimony. The minutes will be available on the MSCCSP website after the Commission reviews and approves the minutes at its next meeting, scheduled for May 7, 2019. The MSCCSP values the testimony provided by members of the public, as public participation is essential to creating awareness of sentencing issues.

SENTENCES REPORTED IN FY 2018

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 sentencing events where the MSCCSP received a sentencing guidelines worksheet.

Sentencing Guidelines Worksheets Received

In fiscal year 2018, the MSCCSP received sentencing guidelines worksheets for 10,935 sentencing events.⁹ Nearly two-thirds of the worksheets (63.4%) were submitted electronically using MAGS.¹⁰ The remaining 36.6% of worksheets were submitted by mail to the MSCCSP office. The second and third columns of Table 6 illustrate the number and percentage of sentencing guidelines worksheets submitted in fiscal year 2018 by judicial circuit. Image 4 identifies the individual jurisdictions in each judicial circuit. The Third Circuit (Baltimore and Harford Counties) submitted the largest number of sentencing guidelines worksheets (2,275), while the Fourth Circuit (Allegany, Garrett, and Washington Counties) submitted the fewest (631).

In fiscal year 2018, the MSCCSP staff, in combination with staff at the AOC, the Montgomery County Circuit Court, and the Prince George's County Circuit Court, identified 13,213 guidelines-eligible cases and received a paper worksheet or MAGS submission for 12,068 (91.3%) of the guidelines-eligible cases (see the section *The Present Sentencing Guidelines of*

⁹ 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.

¹⁰ Fourteen of the 24 jurisdictions utilized MAGS for all of fiscal year 2018. Kent and Queen Anne's counties deployed MAGS three months into the fiscal year on October 1, 2017. Dorchester and Somerset counties deployed MAGS halfway through the fiscal year on January 1, 2018. Wicomico County deployed MAGS nine months into the fiscal year on April 1, 2018.

this report for a complete definition of guidelines-eligible cases).¹¹ The fourth column of Table 6 indicates the percentage of guidelines-eligible cases with a submitted worksheet in fiscal year 2018 by judicial circuit. Worksheet submission rates ranged from 82.5% to 99.6% for individual circuits. There is variability in worksheet submission rates when looking at individual jurisdictions within each circuit. In general, jurisdictions utilizing MAGS have higher submission rates. As Figure 4 illustrates, worksheet submission rates have increased each year since MAGS was implemented. The MSCCSP anticipates that worksheet submission rates will continue to increase as more jurisdictions implement MAGS.

Table 6. Number and Percentage of Sentencing Guidelines Worksheets Submitted by Circuit, Fiscal Year 2018

Circuit	Number of Worksheets Submitted	Percent of Total Worksheets Submitted¹²	Percent of Guidelines-Eligible Cases with Submitted Worksheet¹³
1*	825	7.5%	90.6%
2*	658	6.0%	95.1%
3	2,275	20.8%	95.0%
4	631	5.8%	99.4%
5**	1,348	12.3%	89.8%
6	1,498	13.7%	99.6%
7	1,707	15.6%	82.5%
8**	1,993	18.2%	88.1%
TOTAL	10,935	100.0%	91.3%

* MAGS was deployed for a portion of the specified report year (FY 2018) in the circuit courts of these judicial circuits. See Appendix F for specific deployment dates.

** MAGS was not yet deployed in the circuit courts of these judicial circuits during the specified reporting period (FY 2018).

¹¹ 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 2018.

¹² Percentages may not total 100% due to rounding.

¹³ The circuit courts in Montgomery and Prince George's Counties identified guidelines-eligible cases using data from their individual case management systems. The AOC identified eligible cases in Baltimore City using mainframe data. Eligible cases in all other jurisdictions were identified by the AOC using data entered into the Uniform Court System (UCS) and Maryland Electronic Courts (MDEC).

Figure 4. Number and Percentage of Sentencing Guidelines Worksheets Submitted by Fiscal Year, Fiscal Years 2013 through 2018

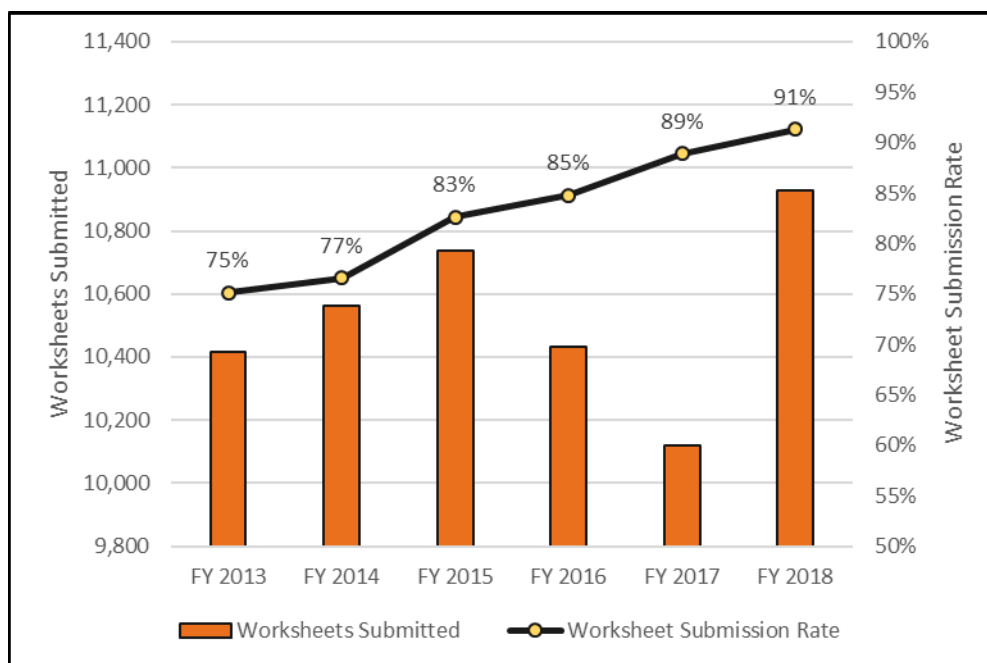
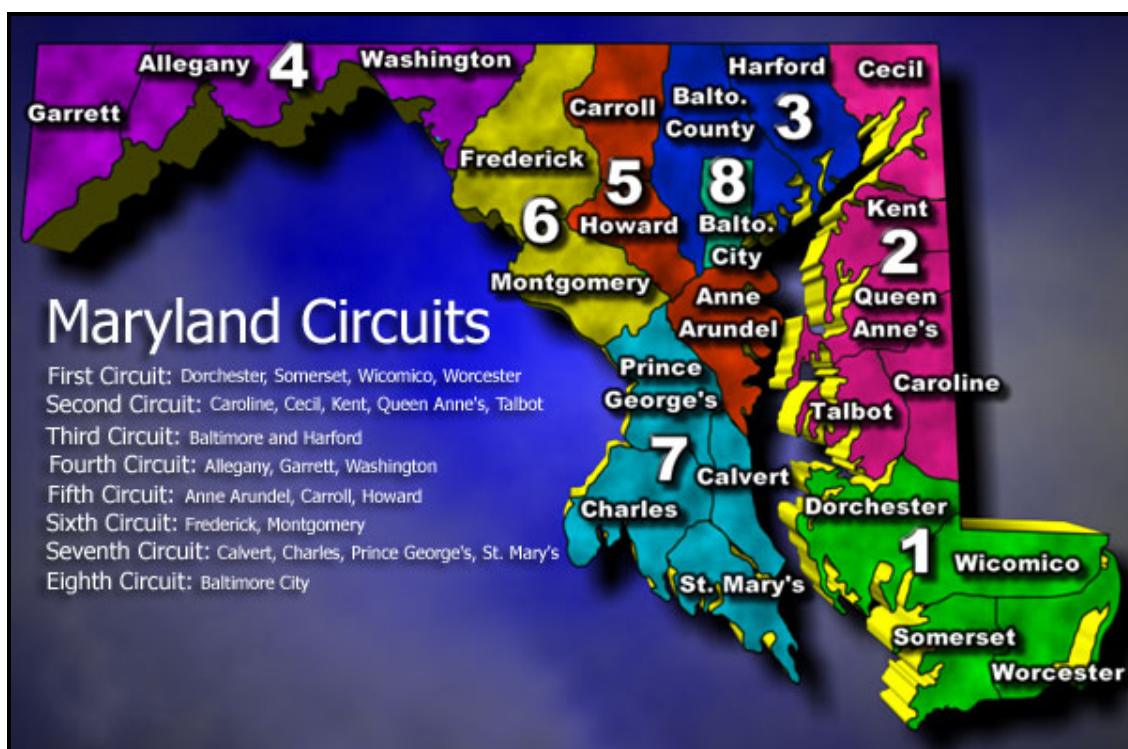


Image 4. Maryland Judicial Circuits



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

Guidelines Sentencing Event Characteristics

Figures 5 through 8 summarize the descriptive characteristics from the 10,935 sentencing guidelines worksheets submitted for offenders sentenced in fiscal year 2018. Most offenders were male (86.7%) and African-American (62.7%). Fewer than 10% were of Hispanic or Latino origin. The median age of offenders at the date of the offense was 28 years. The youngest offender was 13, while the oldest was 79 years of age. Approximately 2% of offenders were under 18 years of age; 25% were 18-22 years old; 32% were 23-30 years old; 23% were 31-40 years old; and the remaining 18% were 41 years or older.

Figure 5. Distribution of Guidelines Sentencing Events by Gender of Offender, Fiscal Year 2018

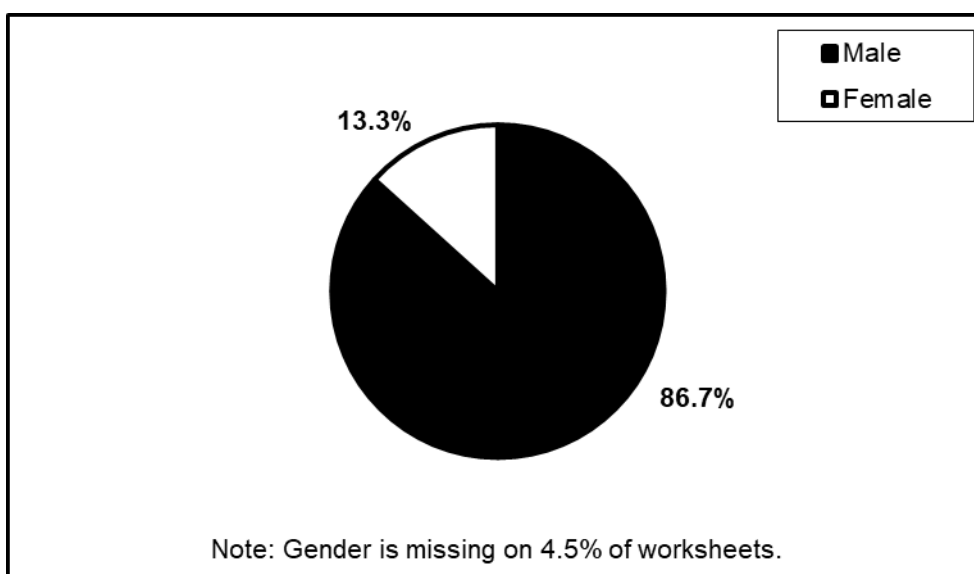


Figure 6. Distribution of Guidelines Sentencing Events by Race of Offender, Fiscal Year 2018

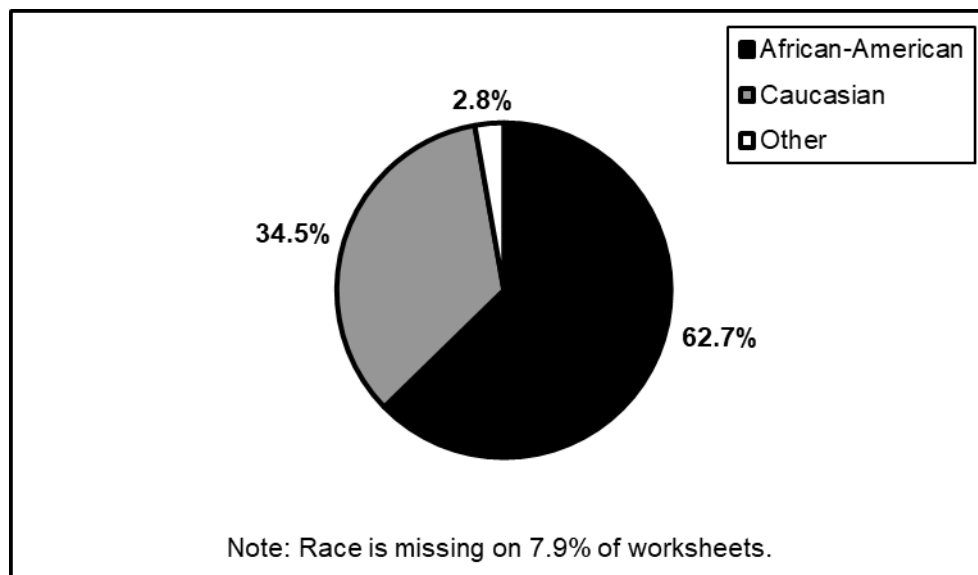


Figure 7. Distribution of Guidelines Sentencing Events by Ethnicity of Offender, Fiscal Year 2018

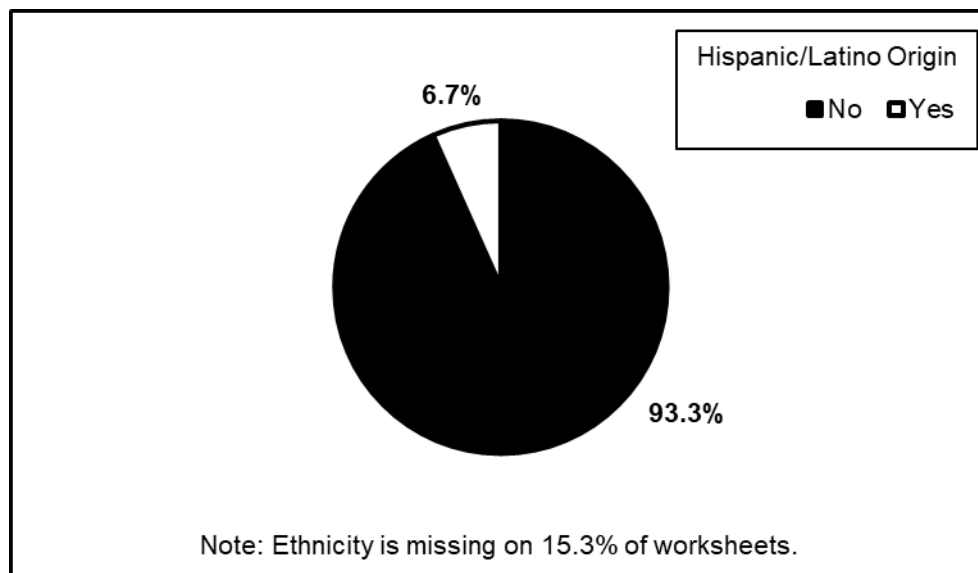
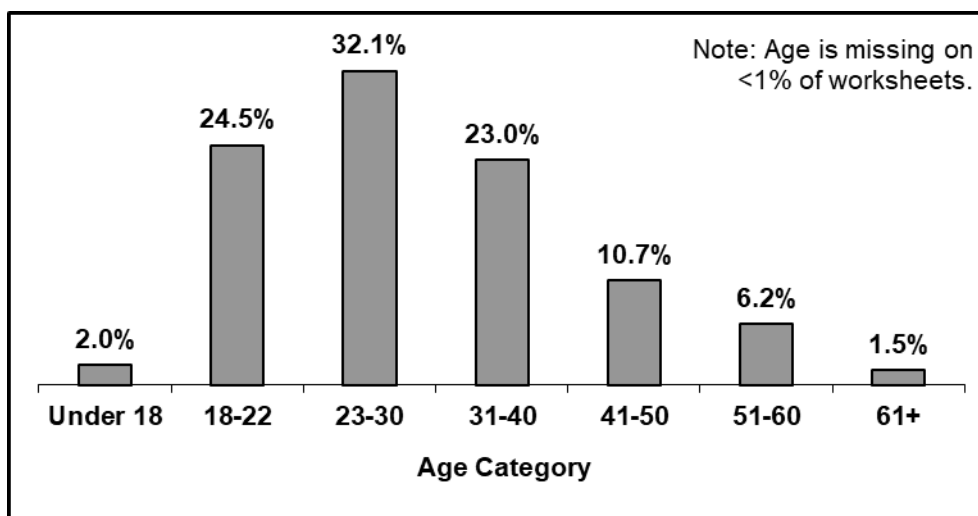


Figure 8. Distribution of Guidelines Sentencing Events by Age of Offender, Fiscal Year 2018

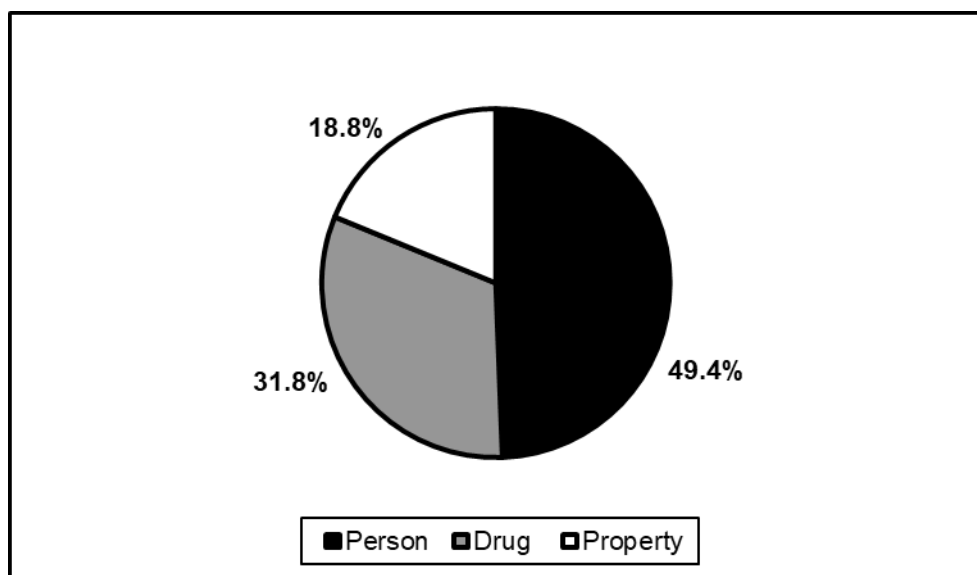


Figures 9 through 13 and Tables 7 through 8 show the distribution of guidelines sentencing events by crime category, seriousness category, components of the offender score, components of the offense score, disposition type, and sentence type. Note that the total number of sentencing events from which the figures and corresponding percentages derive excludes reconsiderations and three-judge panel reviews (N=44).

Figure 9 provides a breakdown of guidelines sentencing events by crime category. For sentencing events involving multiple offenses, the figure considers only the most serious offense. Sentencing events involving a person offense were most common (49.4%), followed by those involving a drug offense (31.8%). In 18.8% of sentencing events, the most serious offense was a property crime. The distribution of sentencing events by crime category was similar when limiting the analysis to defendants sentenced to incarceration (54.1% person, 28.1% drug, 17.9% property).¹⁴

¹⁴ Incarceration includes home detention and credited time, as well as post-sentence jail/prison time.

Figure 9. Distribution of Guidelines Sentencing Events by Crime Category, Fiscal Year 2018



Figures 10a, 10b, and 10c display the distribution of guidelines offenses by offense seriousness category for each of the three crime categories. Among person offenses, offenses with a seriousness category V were most common (33.9%), followed by offenses with a seriousness category III (20.8%). *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 10a. Distribution of Person Offenses by Seriousness Category, Fiscal Year 2018

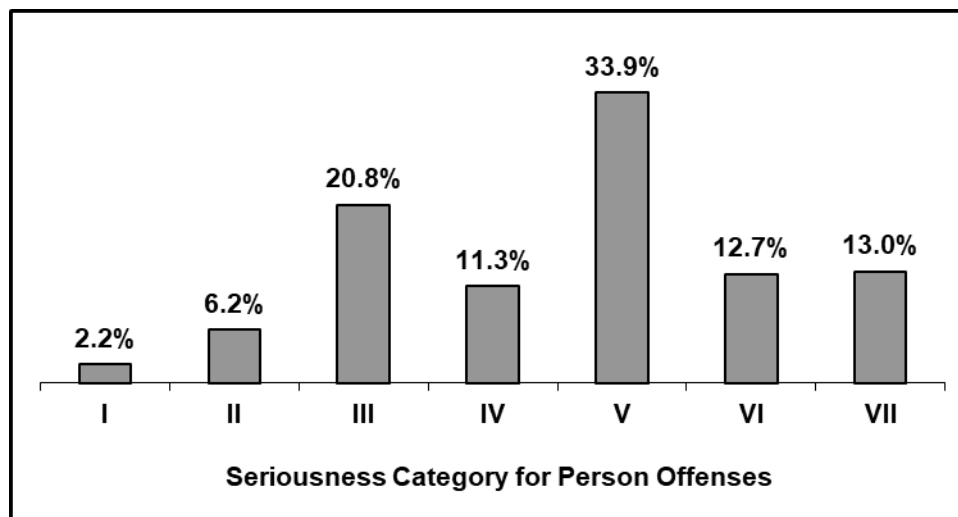


Figure 10b summarizes the distribution of drug offenses by seriousness category. Drug offenses with seriousness categories IIIB (47.2%), IV (25.3%), and VII (21.5%) were most common.

Distribution of cocaine and *distribution of heroin* were the most frequently occurring category IIIB offenses. *Distribution of marijuana* was the most frequently occurring category IV offense, while *possession of marijuana* was the most frequently occurring category VII offense. Note that there are currently no seriousness category VI drug offenses.

Figure 10b. Distribution of Drug Offenses by Seriousness Category, Fiscal Year 2018

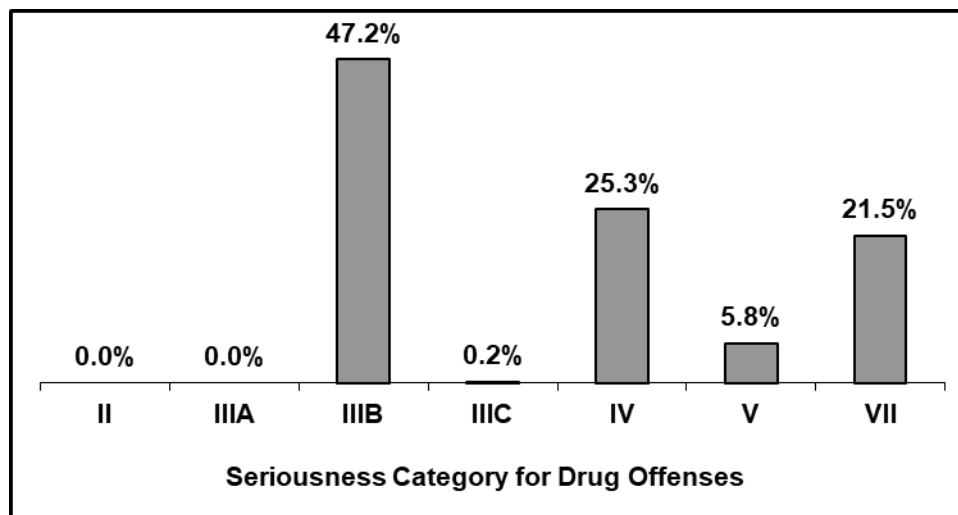


Figure 10c provides the distribution of property offenses by seriousness category. Offenses with a seriousness category II (0.3%) were far less frequent than offenses in the other seriousness categories. The most common property offenses were *first degree burglary* (III), *second degree burglary* (IV), *fourth degree burglary* (VII), and *theft or theft scheme of at least \$1,500 but less than \$25,000* (VI).

Figure 10c. Distribution of Property Offenses by Seriousness Category, Fiscal Year 2018

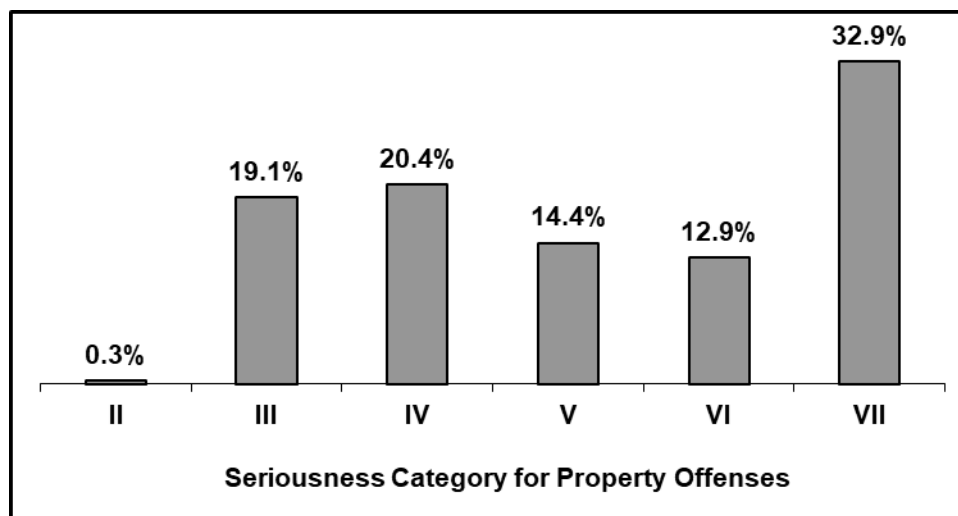


Table 7 shows the distribution of guidelines sentencing events by the four components of the offender score. The offender score provides a measure of the defendant's prior criminal history and ranges from 0 to 9. Table 8 displays the distribution of person offenses by the four components of the offense 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.¹⁵

¹⁵ For a further description of offender and offense scores, see *The Present Sentencing Guidelines* section of this report, starting at page 2.

Table 7. Distribution of Guidelines Sentencing Events by Offender Score, Fiscal Year 2018

Offender Score Component		Percent of Offenders
Relationship to CJS When Offense Occurred	0 = None or pending cases	76.3%
	1 = Court or other criminal justice supervision	23.7%
Juvenile Delinquency ¹⁶	0 = 23 years or older or crime-free for 5 years or no more than 1 finding of a delinquent act	94.6%
	1 = Under 23 years old and : 2 or more findings of a delinquent act or 1 commitment	3.8%
	2 = Under 23 years and committed 2 or more times	1.6%
Prior Adult Criminal Record ¹⁷	0 = None	34.6%
	1 = Minor	22.6%
	3 = Moderate	21.0%
	5 = Major	21.7%
Prior Adult Parole/ Probation Violation	0 = No	73.7%
	1 = Yes	26.3%
AVERAGE TOTAL OFFENDER SCORE = 2.51		

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 2018 was 2.51. Approximately three-quarters of offenders had no relationship to the criminal justice system when the instant offense occurred (76.3%). Similarly, 73.7% had no prior adult parole or probation violations, and only 5.4% received points for a juvenile record. Greater variability was observed for the prior adult criminal record component of the offender score, with approximately one-third of offenders with

¹⁶ The juvenile delinquency score was revised effective July 1, 2018, after the conclusion of the reporting period (FY 2018) for this report.

¹⁷ 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 2.3% of electronic guidelines worksheets in fiscal year 2018.

no record and the remaining offenders divided almost equally among the minor (22.6%), moderate (21%), and major (21.7%) prior adult criminal record categories.

Table 8. Distribution of Person Offenses by Offense Score, Fiscal Year 2018

Offense Score Component		Percent of Offenders
Seriousness Category	1 = V – VII	59.3%
	3 = IV	11.6%
	5 = III	20.6%
	8 = II	6.3%
	10 = I	2.2%
Victim Injury	0 = No injury	59.4%
	1 = Injury, non-permanent	29.2%
	2 = Permanent injury or death	11.4%
Weapon Presence	0 = No weapon	41.2%
	1 = Weapon other than firearm	19.1%
	2 = Firearm or explosive	39.7%
Special Victim Vulnerability	0 = No	89.6%
	1 = Yes	10.4%
AVERAGE TOTAL OFFENSE SCORE = 4.3		

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 2018 was 4.3. More than half of all person offenses had a seriousness category of V, VI, or VII. Approximately 59% of offenses involved no injury to the victim, and 41.2% involved no weapon. Finally, 10.4% 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 11 shows the distribution of guidelines sentencing events by disposition type (Appendix D contains a description of the seven major disposition types listed on the sentencing guidelines worksheet). The vast majority of sentencing events were resolved by either an ABA plea

agreement¹⁸ (43.1%) or a non-ABA plea agreement (38.3%). An additional 14% were resolved by a plea with no agreement, and 4.6% of sentencing events were resolved by either a bench or jury trial (.8% and 3.8%, respectively).

Figure 11. Distribution of Guidelines Sentencing Events by Disposition, Fiscal Year 2018

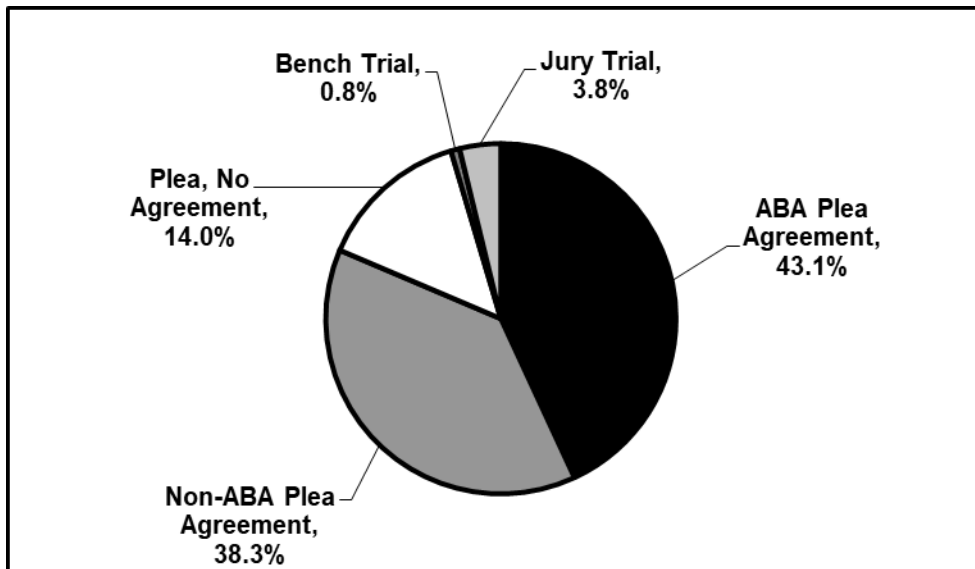
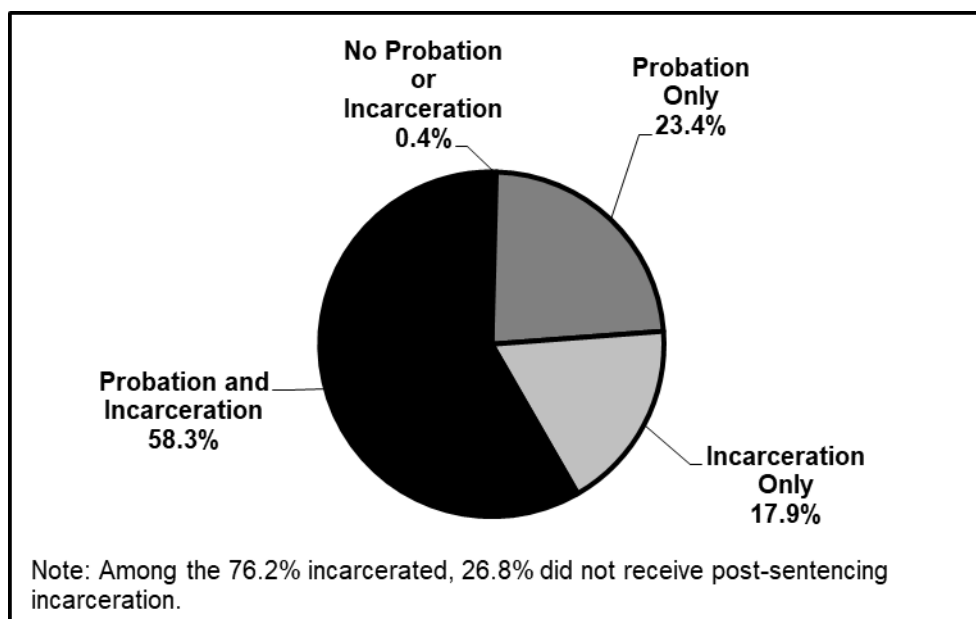


Figure 12 displays the distribution of guidelines sentencing events by sentence type. Note that incarceration includes home detention and credited time, as well as post-sentence jail/prison time. Few offenders (.4%) received a sentence that did not include either incarceration or probation. Nearly one-quarter (23.4%) received sentences to probation only. Similarly, 17.9% of offenders received sentences to incarceration only. More than half (58.3%) of all sentencing events resulted in a sentence to both incarceration and probation. Among those incarcerated, 26.8% did not receive post-sentencing incarceration.

¹⁸ 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).

Figure 12. Distribution of Guidelines Sentencing Events by Sentence Type, Fiscal Year 2018



Figures 13a and 13b provide the percentage of guidelines sentencing events resulting in incarceration and the average (mean and median) sentence length among those incarcerated for the past ten fiscal years (2009-2018), 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 13a indicates that the percentage of offenders sentenced to incarceration was highest in fiscal years 2009 and 2011 (78.1%) and lowest in fiscal year 2015 (75%). The incarceration rate increased slightly in the past fiscal year from 75.9% to 76.2%.

**Figure 13a. Percentage of Guidelines Sentencing Events Resulting in Incarceration
by Fiscal Year**

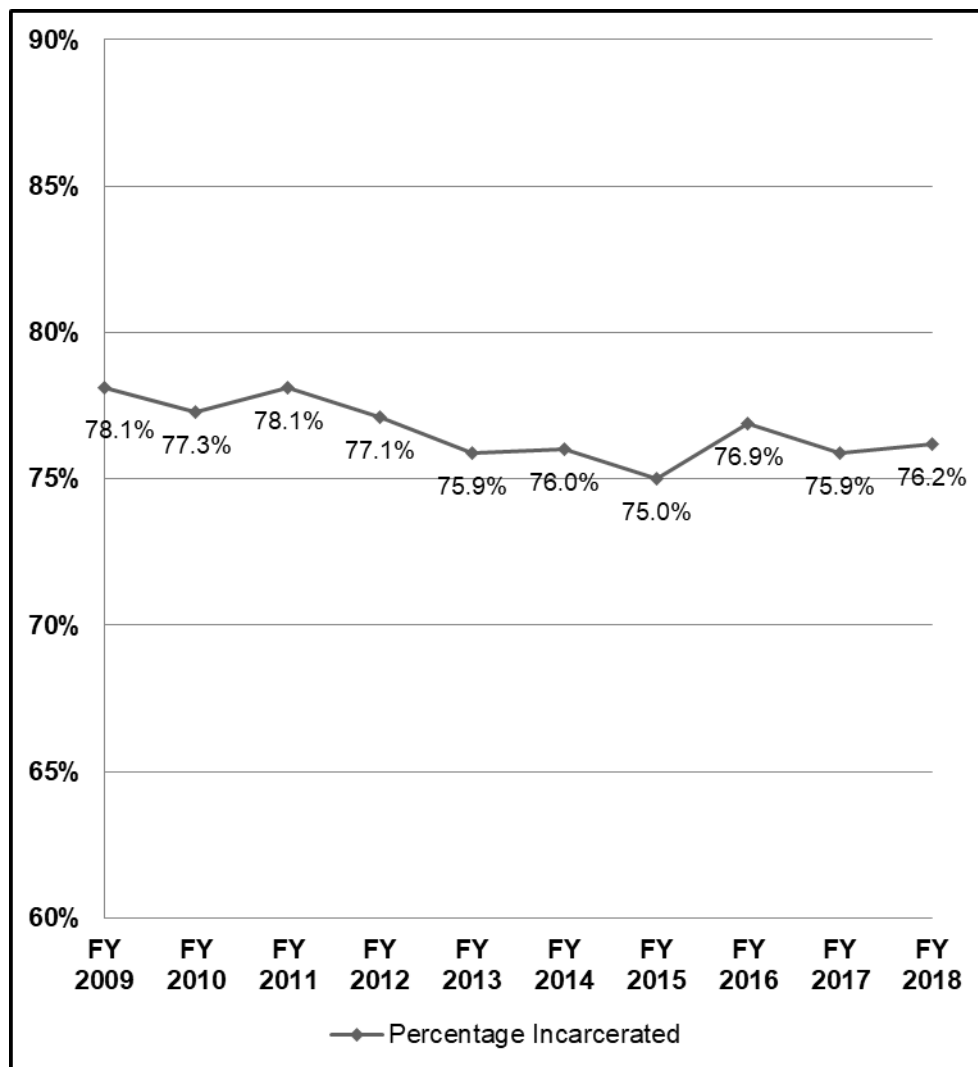
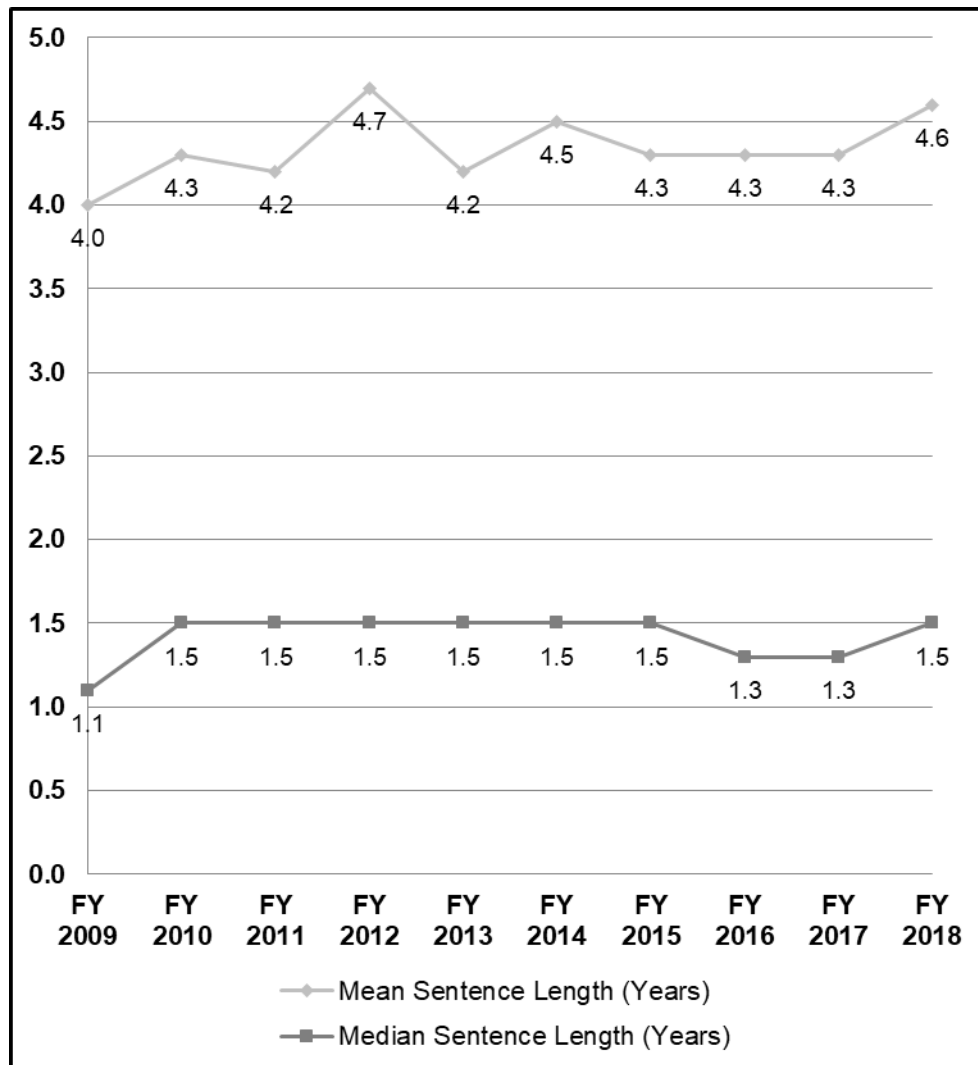


Figure 13b indicates that the typical sentence length among those incarcerated was relatively stable during the ten-year period. The mean (average) sentence ranged from a low of 4 years in fiscal year 2009 to a high of 4.7 years in fiscal year 2012. Sentence lengths increased slightly in the past fiscal year from 4.3 years to 4.6 years. The median (middle) sentence was 1.5 years for most of the ten-year period, except for fiscal year 2009 when the median dipped slightly to 1.1 years and more recently in fiscal years 2016 and 2017 when the median dipped to 1.3 years. 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 13b. Length of Sentence for Guidelines Sentencing Events by Fiscal Year



JUDICIAL COMPLIANCE WITH MARYLAND'S VOLUNTARY SENTENCING GUIDELINES

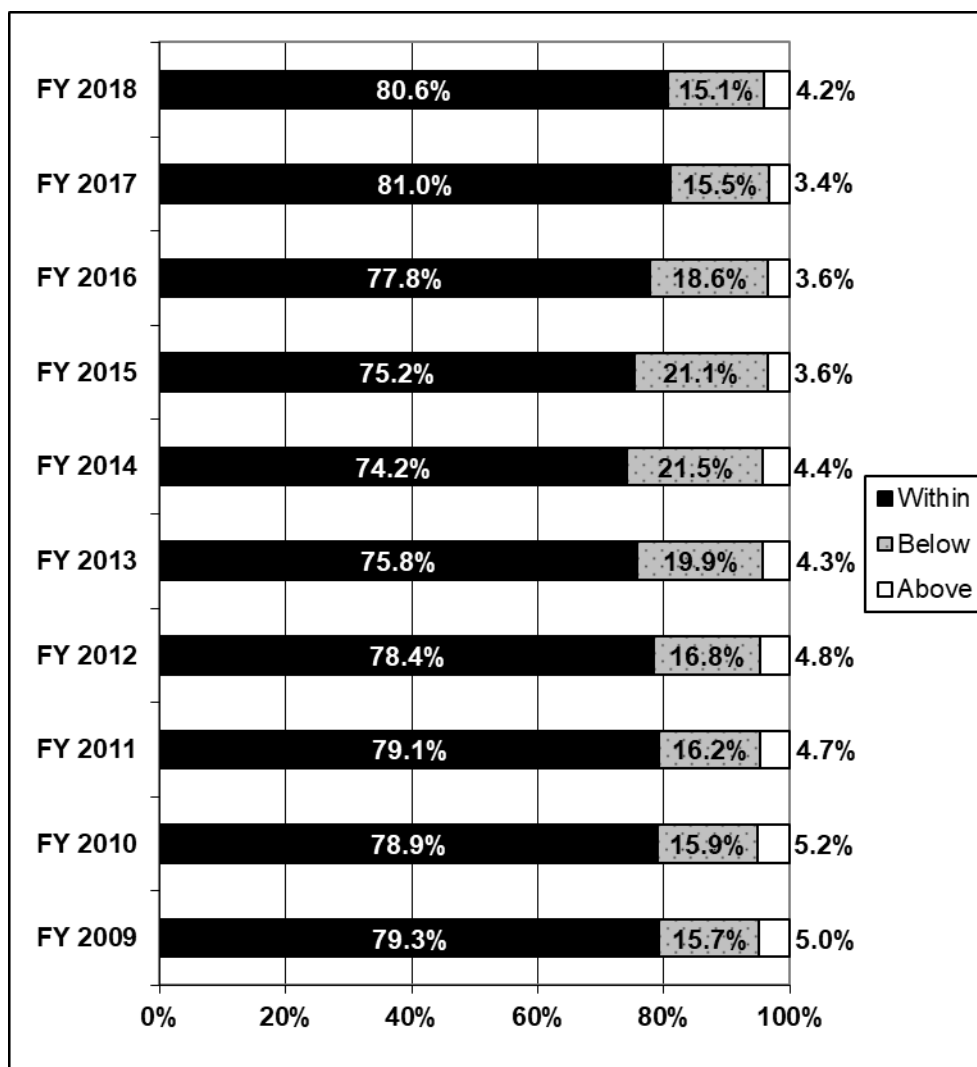
The MSCCSP's governing legislation mandates the Commission to examine judicial compliance based on data extracted from the sentencing guidelines worksheets submitted after circuit courts sentence offenders. The following provides a detailed examination of judicial compliance with Maryland's voluntary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

Judicial Compliance Rates Overall

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 sentencing event. The MSCCSP deems sentences to *corrections options* programs (e.g., drug court; (HG), § 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 sentencing event 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 14 illustrates the overall guidelines compliance rates for the past ten fiscal years (2009-2018). 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 fairly stable during the past decade, ranging from a low of 74.2% in fiscal year 2014 to a high of 81% in fiscal year 2017.

**Figure 14. Overall Sentencing Guidelines Compliance by Fiscal Year
(All Sentencing Events)**

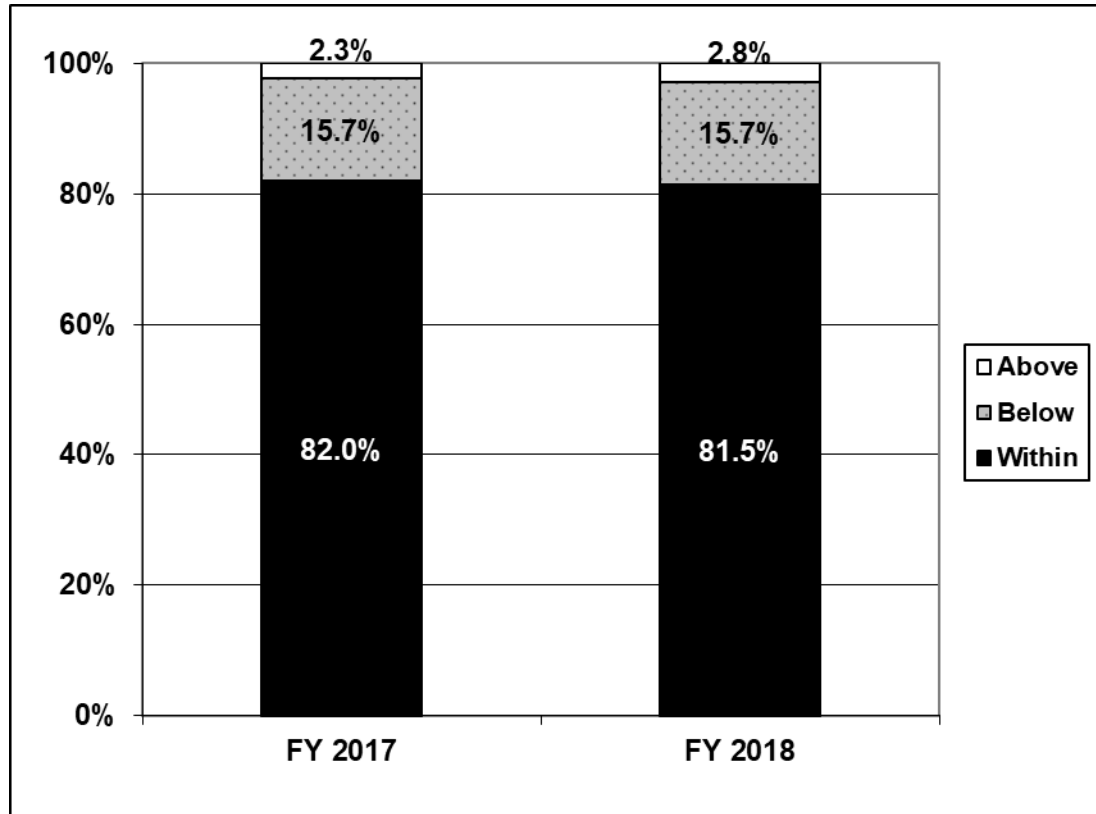


Analyses of judicial compliance in Maryland traditionally focus on sentences for single-count convictions because they permit the most direct comparison of compliance by crime category and by offense type within the applicable cell of the sentencing matrix. Since multiple-count convictions can consist 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 2017 and 2018. Of the 10,935 sentencing guidelines worksheets submitted to the MSCCSP in fiscal year 2018, 8,173 (74.7%) pertained to single-count convictions.

Figure 15 provides the overall guidelines compliance rates for fiscal years 2017 and 2018 based on single-count convictions. The rates are similar to those in Figure 14. In both years, the overall rate of compliance exceeded the Commission's goal of 65% compliance. Approximately

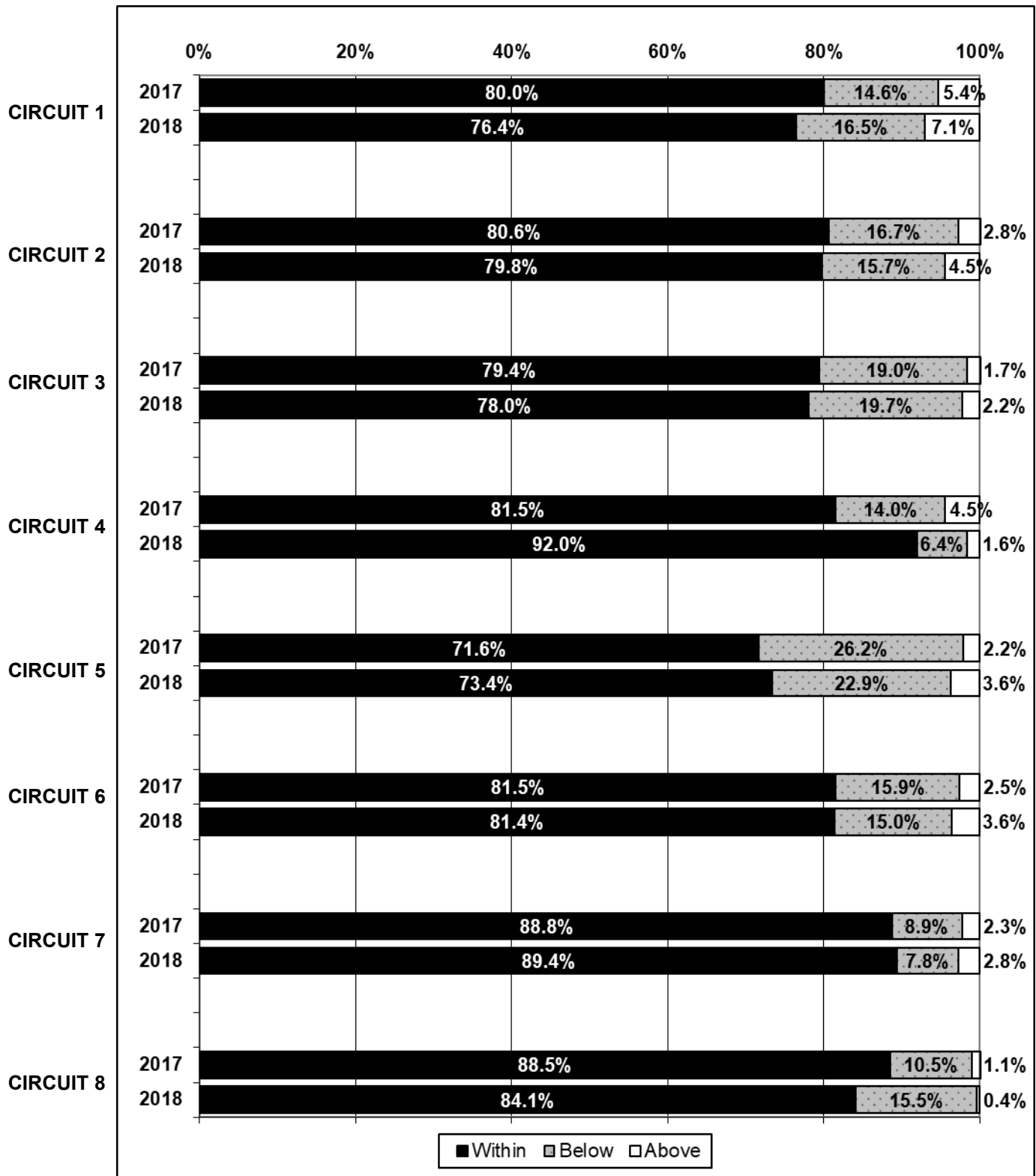
82% of sentencing events were compliant in both fiscal years. When departures occurred, they were more often below the guidelines than above.

**Figure 15. Overall Sentencing Guidelines Compliance by Fiscal Year
(Single-Count Convictions)**



Judicial Compliance Rates by Circuit

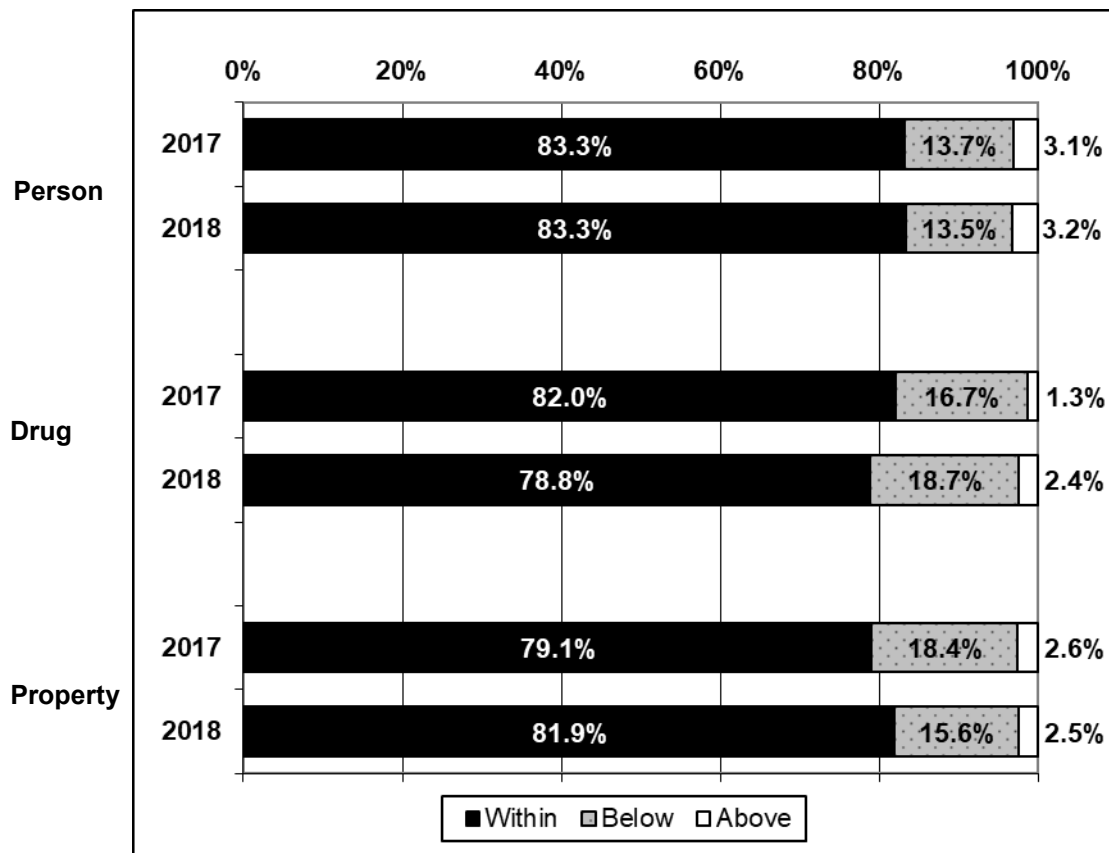
As shown in Figure 16, all eight trial court judicial circuits met the 65% compliance benchmark in fiscal year 2018. The Fourth Circuit had the highest compliance rate (92%), followed by the Seventh Circuit (89.4%). In contrast, compliance was lowest in the Fifth Circuit (73.4%). The largest change in the compliance rate occurred in the Fourth Circuit, where the rate increased 10.5 percentage points from 81.5% in fiscal year 2017 to 92% in fiscal year 2018. This increase can largely be attributed to an increase in the reported use of ABA pleas.

Figure 16. Sentencing Guidelines Compliance by Circuit and Fiscal Year

Judicial Compliance Rates by Crime Category

Figure 17 shows judicial compliance by crime category for fiscal years 2017 and 2018. Person offenses were the least likely to result in a departure from the guidelines in fiscal year 2018, although differences in compliance rates from one crime category to the next were small. The compliance rate for person offenses remained the same from fiscal year 2017 to fiscal year 2018, while the compliance rate decreased slightly for drug offenses and increased slightly for property offenses. The 65% benchmark was met for all three crime categories in both fiscal years.¹⁹

Figure 17. Sentencing Guidelines Compliance by Crime Category and Fiscal Year

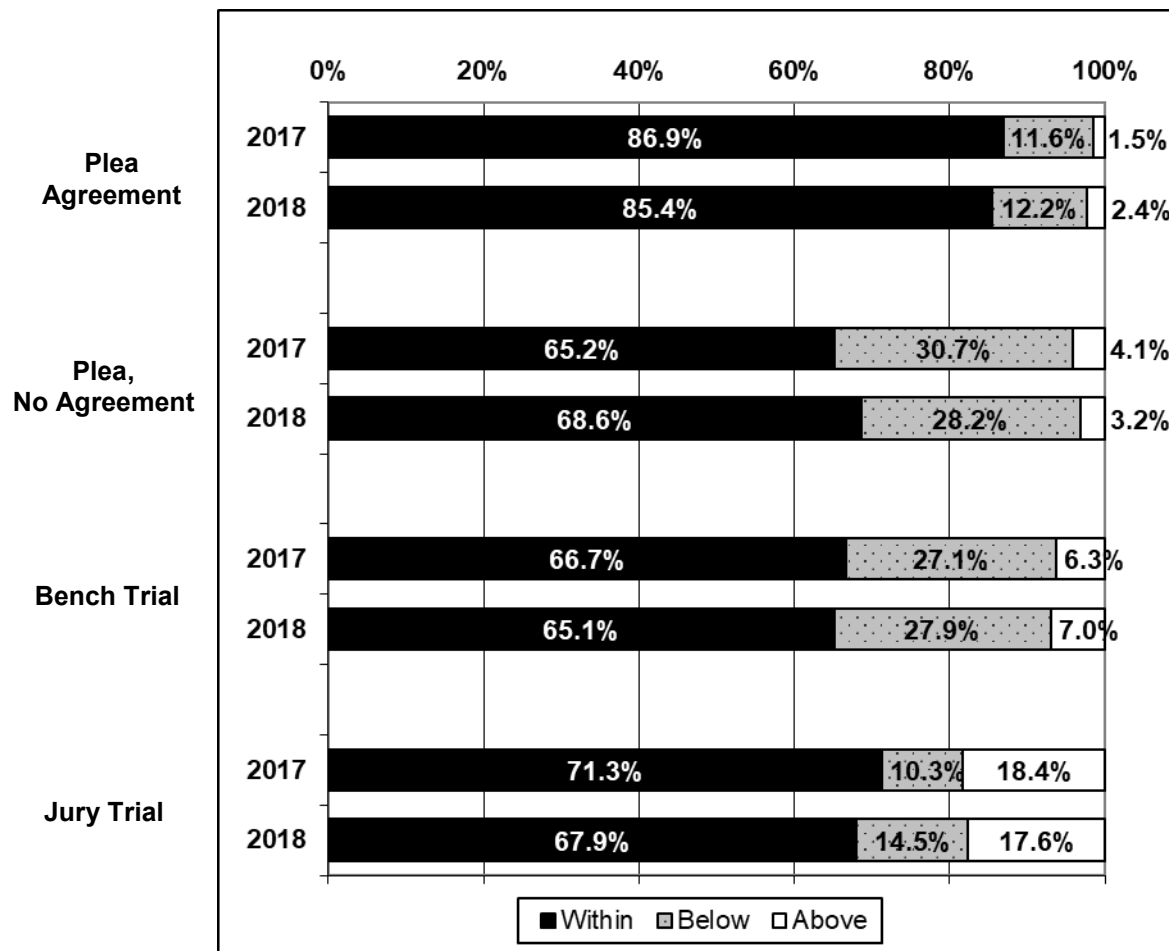


¹⁹ See Appendix C for sentencing guidelines compliance and average sentence for the five most common offenses in each crime category.

Judicial Compliance Rates by Type of Disposition

Figure 18 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 sentencing events (85.4%) in fiscal year 2018. This is not surprising given that the plea agreement category includes ABA plea agreements, which are compliant by definition. In contrast, sentencing events resolved by a bench trial had the lowest compliance rate (65.1%). Sentencing events resolved by a plea with no agreement saw the largest percentage of downward departures (28.2%). Finally, jury trials were the only disposition type where upward departures occurred more often than downward departures in fiscal year 2018.

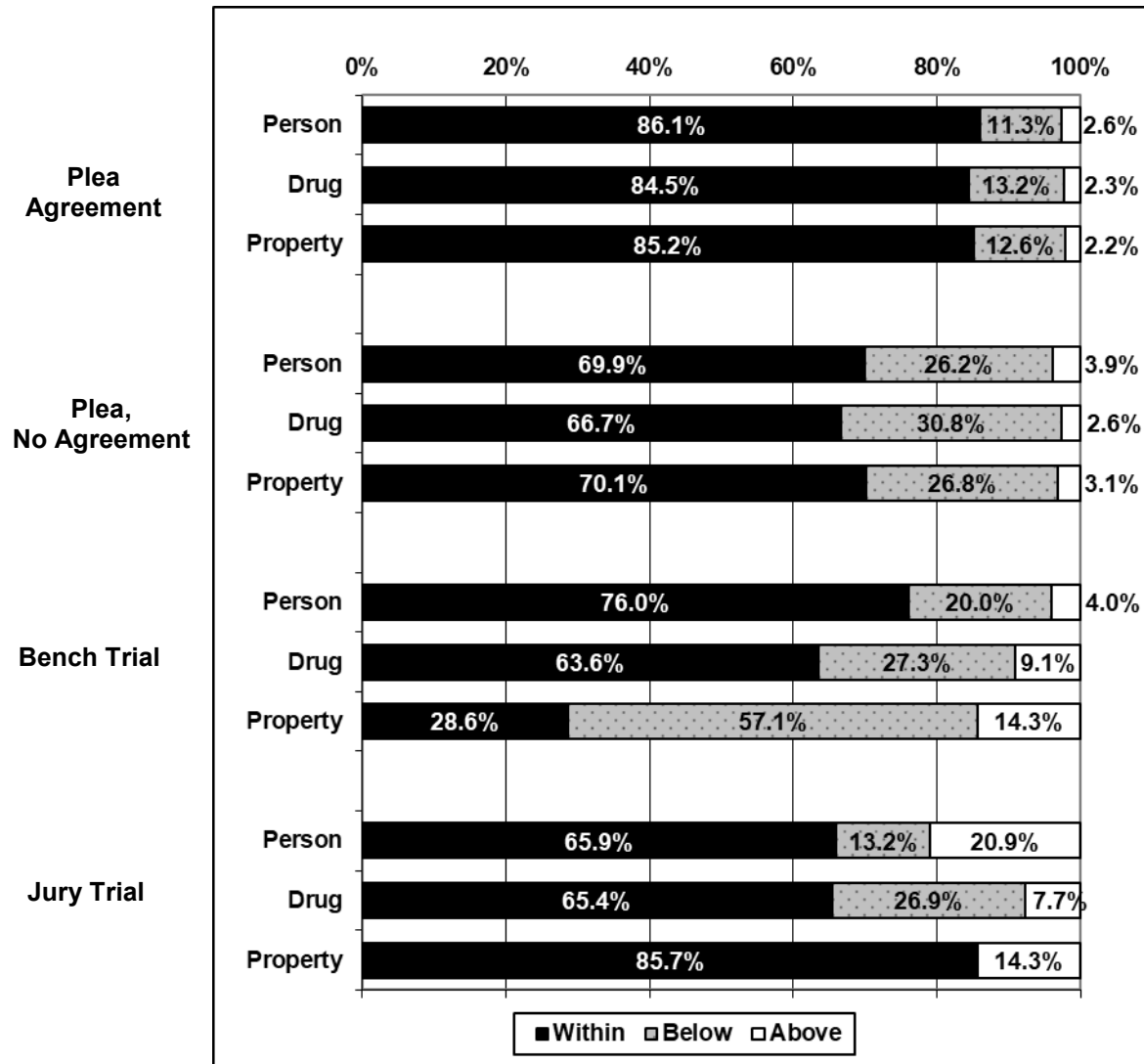
Figure 18. Sentencing Guidelines Compliance by Type of Disposition and Fiscal Year



Judicial Compliance Rates by Crime Category and Disposition

Figure 19 displays compliance rates by crime category and disposition for fiscal year 2018. Some of the rates are based on a very small number of cases. For example, the MSCCSP received only seven worksheets in fiscal year 2018 for single-count property offenses adjudicated by a bench trial. Small numbers limit the ability to provide meaningful interpretation.

Figure 19. Sentencing Guidelines Compliance by Crime Category and Disposition, Fiscal Year 2018



The highest compliance rates were observed for person, property, and drug offenses adjudicated by a plea agreement (86.1%, 85.2%, and 84.5%, respectively) and property offenses adjudicated by a jury trial (85.7%). Compliance rates fell short of the benchmark of 65% for drug and property offenses resolved by a bench trial (63.6% and 28.6%, respectively). Upward departures were most common among person offenses disposed of by a jury trial

(20.9%), while downward departures occurred most often among property offenses disposed of by a bench trial (57.1%).

Departure Reasons

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 provides a space for the judge to write in other reasons not contained on the reference card.

Efforts to facilitate the reporting of reasons for departing from the guidelines have helped to address the underreporting of departure reasons. In fiscal year 2018, 1,505 (18.5%) of 8,137 single-count guidelines-eligible sentencing events resulted in a departure from the sentencing guidelines. The reason for departure was provided in 75.1% of these fiscal year 2018 departure cases. This represents a notable increase in reporting from fiscal year 2017 (63.1%). The MSCCSP staff will continue to emphasize the need to include a reason for departure when providing training sessions. 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 2018. The tables include all of the reasons listed on the reference card as well as the majority of the "other" cited reasons. Table 9 provides a rank order of the mitigating reasons judges provided for sentencing events where the sentence resulted in a downward departure. The first row of the table shows that in 26.2% 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 Division of Parole and Probation; and 3) offender's commitment to substance abuse treatment or other therapeutic program.

**Table 9. Departure Reasons for Sentencing Events Below the Guidelines,
Fiscal Year 2018²⁰**

Mitigating Reasons	Percent of Departures Where Reason is Cited	Valid Percent²¹
<i>No Departure Reason Given</i>	26.2%	---
The parties reached a plea agreement that called for a reduced sentence	35.9%	48.7%
Recommendation of State's Attorney or Division of Parole and Probation	21.9%	29.7%
Offender's commitment to substance abuse treatment or other therapeutic program	7.6%	10.3%
Offender made restorative efforts after the offense	3.1%	4.2%
Offender's minor role in the offense	2.9%	3.9%
Offender's age/health	2.0%	2.8%
Judicial discretion	1.7%	2.3%
Weak facts of the case	1.5%	2.0%
Offender's prior criminal record not significant	1.3%	1.8%
Offender had diminished capability for judgment	1.3%	1.7%
Victim's participation in the offense lessens the offender's culpability	1.2%	1.6%
Victim requested a more lenient sentence	1.0%	1.4%
Offender already serving sentence in another case	0.9%	1.3%
Allow offender to maintain employment	0.8%	1.1%
Victim unavailable or not willing to cooperate	0.4%	0.5%
Offender expressed remorse	0.3%	0.4%
Offender cooperated with authorities	0.2%	0.2%
Offender was influenced by coercion or duress	0.2%	0.2%
Other reason (not specified above)	5.0%	6.8%

Table 10 provides a rank order of the aggravating reasons judges provided for sentencing events where the sentence resulted in an upward departure. The first row of the table shows that in 17.2% 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

²⁰ Each sentencing event may cite multiple reasons.

²¹ Valid percent based on the number of sentencing events below the guidelines with reason cited.

State's Attorney or Division of Parole and Probation; 2) the level of harm was excessive; and 3) the vicious or heinous nature of the conduct.

Table 10. Departure Reasons for Sentencing Events Above the Guidelines, Fiscal Year 2018²²

Aggravating Reasons	Percent of Departures Where Reason is Cited	Valid Percent²³
<i>No Departure Reason Given</i>	17.2%	---
Recommendation of State's Attorney or Division of Parole and Probation	35.2%	42.6%
The level of harm was excessive	13.2%	16.0%
The vicious or heinous nature of the conduct	12.3%	14.9%
Offender's major role in the offense	11.5%	13.8%
Offender exploited a position of trust	8.4%	10.1%
Special circumstances of the victim	7.9%	9.6%
Offender's significant participation in major controlled substance offense	6.6%	8.0%
The parties reached a plea agreement	4.4%	5.3%
Judicial discretion	2.6%	3.2%
Offender's prior criminal record significant	2.2%	2.7%
Involvement of firearms in offense	2.2%	2.7%
Facts of case suggest offender likely guilty of more serious offense	1.3%	1.6%
Agreement to modify sentence at later date and offender to enter treatment	0.4%	0.5%
Repeat offender	0.4%	0.5%
Offender attempted to destroy or conceal evidence	0.4%	0.5%
Lengthier sentence necessary for deterrence	0.4%	0.5%
Offender's lack of remorse	0.4%	0.5%
Offender committed a "white collar" offense	0.0%	0.0%
Other reason (not specified above)	11.0%	13.3%

²² Each sentencing event may cite multiple reasons.

²³ Valid percent based on the number of sentencing events 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 sentences²⁴ 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 2018 by judicial circuit. Reconsidered sentences were reported for twenty-nine offenders and thirty-five offenses. *Robbery with a dangerous weapon* (CR, § 3-403) was the most common violent offense in reconsidered cases reported to the MSCCSP in fiscal year 2018.

Table 11. Reconsiderations for Crimes of Violence (CR, § 14-101), Fiscal Year 2018²⁵

Circuit	Offense	N
SECOND	Robbery with Dangerous Weapon	1
THIRD	Assault, 1 st Degree	1
	Murder, 2 nd Degree	1
	Rape, 1 st Degree	2
	Robbery	1
	Robbery with Dangerous Weapon	1
FOURTH	Robbery	1
	Robbery with Dangerous Weapon	1
SIXTH	Arson, 1 st Degree	1
	Assault, 1 st Degree	4
	Child Abuse, Sexual	1
	Firearm Use in Felony or Crime of Violence	3
	Murder, 2 nd Degree, Attempted	1
	Robbery	5
	Robbery with Dangerous Weapon	9
	Sex offense, 2 nd Degree, Adult Offender with Victim Under 13	1
SEVENTH	Murder, 1 st Degree, Attempted	1

²⁴ Maryland Rule 4-345(e) indicates that upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

²⁵ Table 11 identifies reconsidered sentences for 29 offenders and 35 offenses.

Economic Loss in Title 7 and Title 8 Crimes

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.²⁶ In fiscal year 2018, sentencing guidelines worksheets reported 1,210 sentences for theft, fraud, and related crimes. Only 629 (52%) of these sentences recorded an actual dollar amount to indicate the economic loss to the victim. Unknown amount was marked for 386 (31.9%) of 1,210 theft and fraud related offenses, and the field was left blank for the remaining 16.1% of sentences. Statewide deployment of MAGS should 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 \$1,003,724. The mean (average) amount of loss was \$19,626, while the median (middle) amount of loss was \$2,000. 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, *felony theft or theft scheme, at least \$1,500 but less than \$25,000* (CR, § 7-104) was the most common offense in which the amount of economic loss was reported on the sentencing guidelines worksheet.

Victim Information

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 20 through 22 detail the responses to these items in fiscal year 2018. Unfortunately, the victim-related items are often left blank on the worksheet. For example, whether victim-related court costs were imposed was left blank on 55.6% 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.

²⁶ 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)).

Figure 20 indicates that victim-related court costs were imposed in 40.5% of sentencing events. These court costs may be imposed for all crime types, not just those involving a direct victim. The costs outlined in CJ, § 7-409 include a \$45 Circuit Court fee that is divided among the State Victims of Crime Fund, the Victim and Witness Protection and Relocation Fund, and the Criminal Injuries Compensation Fund.

Figure 20. Distribution of Guidelines Sentencing Events by Whether Victim-Related Court Costs Imposed, Fiscal Year 2018

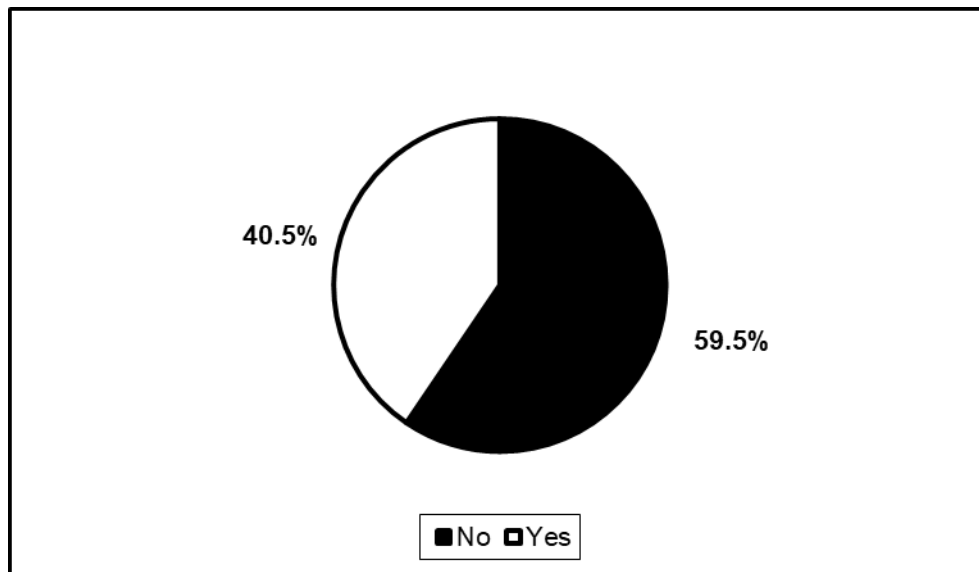
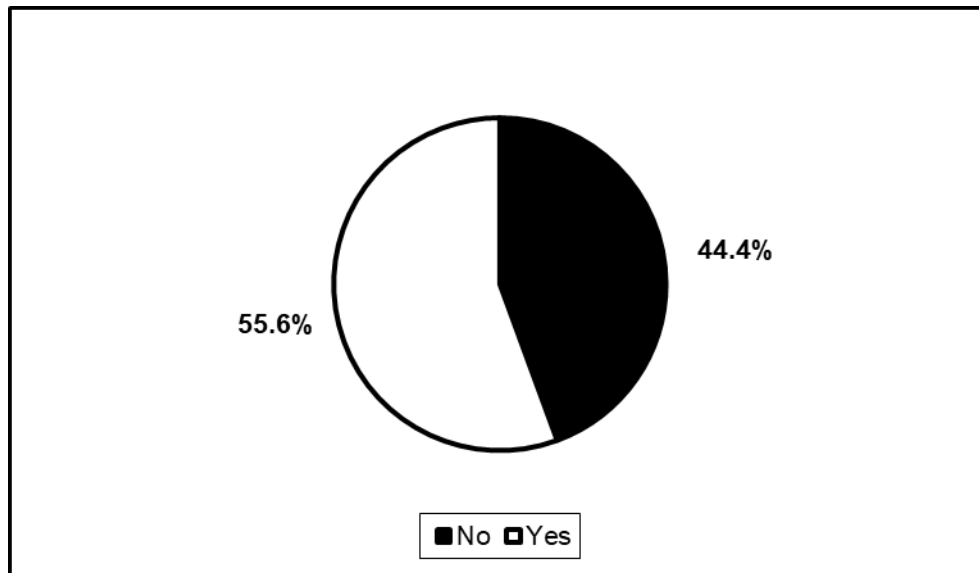


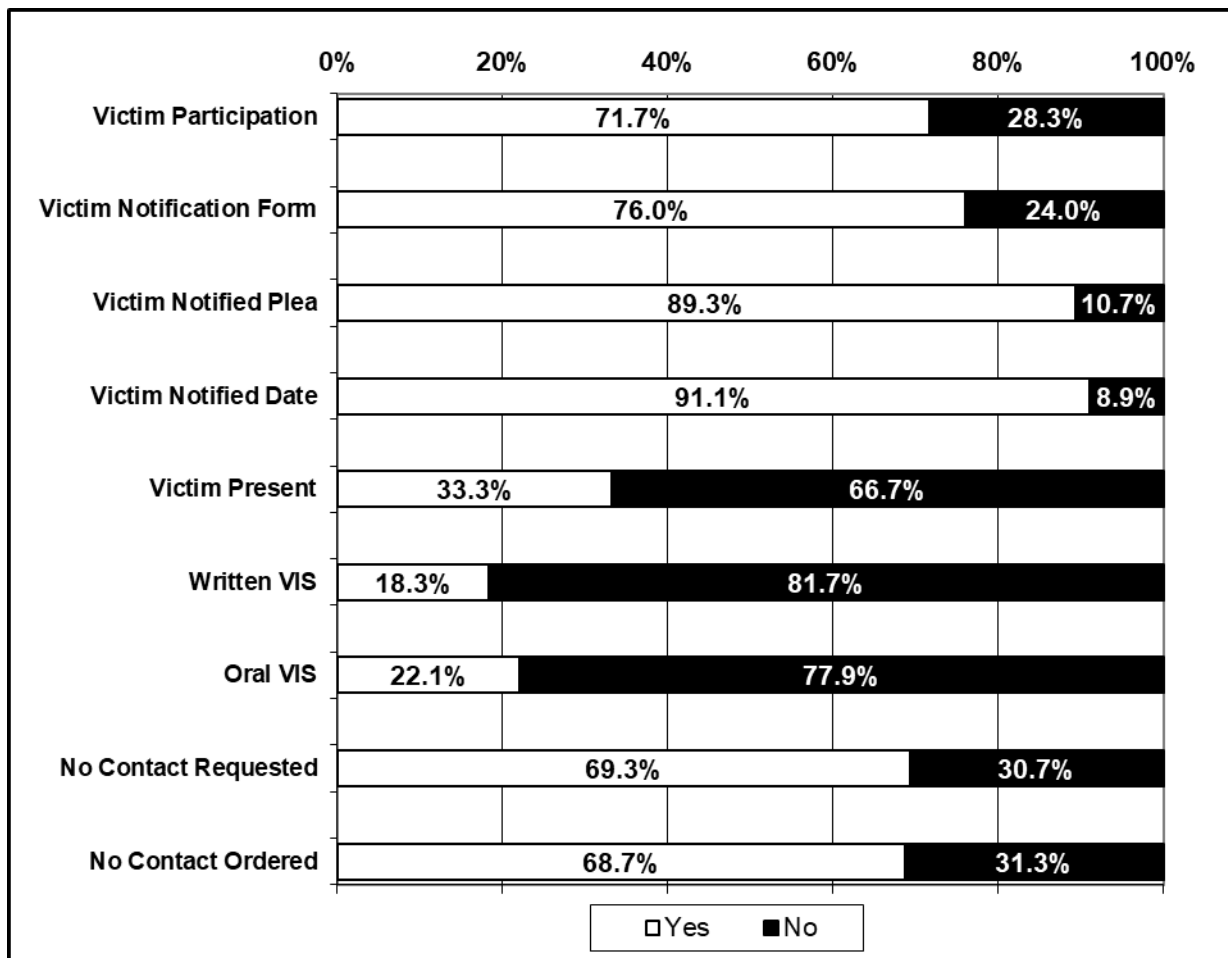
Figure 21 illustrates that 55.6% of worksheets with valid information on the victim-related questions indicated there was a victim. The responses to the items in the *Victim Information* section of the worksheet for sentencing events involving a victim are summarized in Figure 22.

Figure 21. Distribution of Guidelines Sentencing Events by Whether Victim Involved, Fiscal Year 2018



In 28.3% of sentencing events 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 76% of sentencing events. Most victims (89.3%) were notified of the terms and conditions of a plea agreement prior to entry of a plea. Similarly, 91.1% of victims were notified of the court date for sentencing. One-third of victims were present at sentencing. A written Victim Impact Statement (VIS) was prepared in 18.3% of sentencing events involving a victim, while the victim or state made a request for an oral VIS in 22.1% of sentencing events. Finally, the victim or state made a request that the defendant have no contact with the victim in 69.3% of sentencing events, and the sentencing judge ordered the defendant to have no contact with the victim in 68.7% of sentencing events involving a victim.

Figure 22. Distribution of Guidelines Sentencing Events by Victim Information, Fiscal Year 2018



PLANNED ACTIVITIES FOR 2019

The MSCCSP has identified several important activities that it will address in 2019. Specifically, it will expand the grouping of designated corrections options allowing judges to utilize a broader range of alternatives to incarceration while remaining compliant with the sentencing guidelines. Additionally, the MSCCSP will work with the Local Government Justice Reinvestment Commission to advise on the development and maintenance of the proposed online locator tool for alternatives to incarceration, as well as the proposed gap/needs analysis of available offender programming.

The MSCCSP will continue to administer Maryland's sentencing guidelines by collecting sentencing guidelines worksheets, maintaining the sentencing guidelines database, monitoring judicial compliance with the guidelines, providing sentencing guidelines education and training, and delivering orientation and instruction on the use of the MAGS application. Additionally, the MSCCSP will review all criminal offenses and changes in the criminal code resulting from the 2019 Legislative Session and adopt seriousness categories for these offenses.

Furthermore, the MSCCSP plans to complete the statewide deployment of MAGS when Anne Arundel County, Baltimore City, and Carroll County initiate use of the automated sentencing guidelines system in 2019. The MSCCSP staff will work with programmers at DPSCS to release an updated version of MAGS to allow for collection of more detailed information on alternatives to incarceration, along with other updates identified by staff and requested by MAGS users. The MSCCSP will coordinate also with the AOC to continue planning for interoperability with the Judiciary's new case management system, MDEC.

The activities described above, in combination with work associated with any pressing policy issues and concerns that develop in the course of the year, are but a few of the many tasks that will be completed by the MSCCSP in 2019 to support the consistent, fair, and proportional application of sentencing practices in Maryland.

APPENDICES

Appendix A:

Sentencing Guidelines Matrices

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

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

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

P=Probation, M=Months, Y=Years

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

P=Probation, M=Months, Y=Years

Appendix B:

Maryland Sentencing Guidelines Worksheet (version 1.9)

MARYLAND SENTENCING GUIDELINES WORKSHEET										OFFENDER NAME - Last, First, Middle		SID#		SEX		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		WORKSHEET #		CRIMINAL EVENT #		Private Public Defender Court Appointed Self		Hispanic/Latino Origin Yes No		Black White Native Hawaiian/Pacific Islander American Indian/Alaskan Native							
CONVICTED OFFENSE TITLE		I-VII		CJIS CODE		MD CODE, ART, & SECTION		STAT. MAX		MAND. MIN									
1 st Convicted Offense																			
2 nd Convicted Offense																			
3 rd 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.)													
1st Off 2nd Off 3rd Off A. Seriousness Category 1 1 1 = V – VII 3 3 3 = IV 5 5 5 = III 8 8 8 = II 10 10 10 = I		A. Relationship to CJS When Instant Offense Occurred 0 = None or Pending Cases 1 = Court or Other Criminal Justice Supervision B. Juvenile Delinquency 0 = 23 years or older or 0 findings of a delinquent act w/in 5 years of the date of the offense 1 = Under 23 years and: 1 or 2 findings of a delinquent act w/in 5 years of the date of offense 2 = Under 23 years and: 3 or more findings of a delinquent act w/in 5 years of the date of offense C. Prior Adult Criminal Record 0 = None 3 = Moderate 1 = Minor 5 = Major D. Prior Adult Parole/Prob Violation 0 = No 1 = Yes		1st Con. Off. TO 2nd Con. Off. TO 3rd Con. Off. TO		1st Convicted Offense For Theft, Fraud, and Related Crimes, please indicate: <input type="checkbox"/> Economic loss \$ <input type="checkbox"/> Unknown Amount Subsequent Offender Fined <input type="checkbox"/> Yes <input type="checkbox"/> No ; Restitution Requested <input type="checkbox"/> Yes <input type="checkbox"/> No Subsequent Offender Proven <input type="checkbox"/> Yes <input type="checkbox"/> No ; Restitution Proven <input type="checkbox"/> Yes <input type="checkbox"/> No 2nd Convicted Offense For Theft, Fraud, and Related Crimes, please indicate: <input type="checkbox"/> Economic loss \$ <input type="checkbox"/> Unknown Amount Subsequent Offender Fined <input type="checkbox"/> Yes <input type="checkbox"/> No ; Restitution Requested <input type="checkbox"/> Yes <input type="checkbox"/> No Subsequent Offender Proven <input type="checkbox"/> Yes <input type="checkbox"/> No ; Restitution Proven <input type="checkbox"/> Yes <input type="checkbox"/> No 3rd Convicted Offense For Theft, Fraud, and Related Crimes, please indicate: <input type="checkbox"/> Economic loss \$ <input type="checkbox"/> Unknown Amount Subsequent Offender Fined <input type="checkbox"/> Yes <input type="checkbox"/> No ; Restitution Requested <input type="checkbox"/> Yes <input type="checkbox"/> No Subsequent Offender Proven <input type="checkbox"/> Yes <input type="checkbox"/> No ; Restitution Proven <input type="checkbox"/> Yes <input type="checkbox"/> No													
OFFENSE SCORE(S)		OFFENDER SCORE		Overall Guidelines Range		Was the offender sentenced to a Corrections Options program under Commission criteria?													
VICTIM INFORMATION Victim Participation <input type="checkbox"/> Yes <input type="checkbox"/> No Victim Notification Form <input type="checkbox"/> Yes <input type="checkbox"/> No Victim Notified Plea <input type="checkbox"/> Yes <input type="checkbox"/> No Victim Notified Date <input type="checkbox"/> Yes <input type="checkbox"/> No Victim Present <input type="checkbox"/> Yes <input type="checkbox"/> No Written VIS <input type="checkbox"/> Yes <input type="checkbox"/> No Oral VIS <input type="checkbox"/> Yes <input type="checkbox"/> No No Contact Requested <input type="checkbox"/> Yes <input type="checkbox"/> No No Contact Ordered <input type="checkbox"/> Yes <input type="checkbox"/> No		SENTENCE DEPARTURE INFORMATION If the actual sentence departs from the guidelines range, please indicate the Court's reason(s) using the numerical code(s) on the list of common departure factors in the manual, if applicable. Departure Code 9 or 18 (Please Explain): [] [] [] []		Additional Information or Institutional/Parole Recommendation Drug Court <input type="checkbox"/> Yes <input type="checkbox"/> No Other <input type="checkbox"/> Yes <input type="checkbox"/> No 50% of Sentence Announced for COVs <input type="checkbox"/> Yes <input type="checkbox"/> No		Worksheet Completed By Title Sentencing Judge (Please Print) Sentencing Judge's Signature													

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

7/2018 (1.9)

Appendix C:

Sentencing Guidelines Compliance and Average Sentence by Offense Type, Fiscal Year 2018 (Most Common Person, Drug, and Property Offenses)

Person Offenses	N	Guidelines Compliance			% Incarc ¹	Average Sentence Among Incarcerated	
		Within	Below	Above		Total Sentence	Total, Less Suspended
Assault, 2 nd Degree	1,040	85.6%	10.6%	3.8%	70.2%	5.2 years	1.2 years
Robbery	403	86.1%	11.9%	2%	87.8%	8.5 years	2.5 years
Wear, Carry, or Transport Handgun	258	95.3%	4.7%	---	67.1%	2.5 years	0.6 years
Robbery with Dangerous Weapon	233	79%	19.3%	1.7%	93.6%	11.7 years	4.7 years
Assault, 1 st Degree	210	66.2%	30.5%	3.3%	92.9%	14.4 years	4.5 years
Drug Offenses							
Distribution Marijuana	649	88.7%	9.3%	2%	46.8%	3 years	0.5 years
Distribution Cocaine	552	65.8%	34.1%	0.2%	78.4%	8.4 years	2.9 years
Distribution Heroin	458	67.7%	31.2%	1.1%	82.5%	8.4 years	2.7 years
Possession Marijuana ²	209	95.7%	1%	3.3%	31.1%	0.3 years	0.1 years
Distribution Narcotics-Drug Not Identified	119	71.4%	26.1%	2.5%	85.7%	8.1 years	2.4 years
Property Offenses							
Burglary, 1 st Degree	262	81.7%	17.6%	0.8%	81.7%	9.5 years	3.4 years
Burglary, 2 nd Degree	221	80.5%	19%	0.5%	81%	8 years	2.6 years
Burglary, 4 th Degree	136	78.7%	16.2%	5.1%	59.6%	2.2 years	0.9 years
Theft or Theft Scheme, At Least \$1,500 but Less Than \$25,000	134	82.1%	13.4%	4.5%	66.4%	3.7 years	1.5 years
Theft or Theft Scheme, At Least \$100 but Less Than \$1,500	91	84.6%	13.2%	2.2%	50.5%	0.5 years	0.3 years

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

² Limited to cases sentenced on or after October 1, 2017.

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).

Appendix F:

Maryland Automated Guidelines System (MAGS) Deployment Schedule

Jurisdiction	Circuit	Deployment Date
Montgomery	6	May 8, 2012
Calvert	7	June 2, 2014
Frederick	6	March 2, 2015
Charles	7	July 1, 2015
Prince George's	7	October 1, 2015
St. Mary's	7	December 1, 2015
Cecil	2	January 1, 2016
Harford	3	April 1, 2016
Baltimore County	3	October 1, 2016
Allegany	4	January 1, 2017
Garrett	4	January 1, 2017
Washington	4	April 1, 2017
Caroline	2	July 1, 2017
Talbot	2	July 1, 2017
Kent	2	October 1, 2017
Queen Anne's	2	October 1, 2017
Dorchester	1	January 1, 2018
Somerset	1	January 1, 2018
Wicomico	1	April 1, 2018
Worcester	1	July 1, 2018
Howard	5	October 1, 2018
Carroll	5	January 1, 2019
		Planned Deployment Date
Anne Arundel	5	<i>April 1, 2019</i>
Baltimore City	8	<i>October 1, 2019</i>