

Maryland State Commission on Criminal Sentencing Policy

Annual Report 2004

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EXECUTIVE SUMMARY

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

In 2004, the SCCSP classified criminal offenses passed by the 2004 Maryland General Assembly; continued reporting data on judicial departure rates, reconsidered sentences, types of pleas, victims' involvement in sentencing; provided data and information to State agencies and media; and worked on the development of the web-based guidelines worksheet submission process. In 2004, the SCCSP also submitted amendments to the Code of Maryland Regulations (COMAR) consisting of modifications to the guideline worksheet addressing House Bill 918 (2004), which required the SCCSP to collect information on the "economic loss" to victims of theft and fraud related crimes. Finally, the SCCSP continued to update its web site (www.msccsp.org), to make it more user-friendly and to provide current reports, allowing both interested citizens and policymakers to have better access to sentencing information from the Circuit Courts of Maryland.

The SCCSP receives Guideline Sentencing Worksheets from all Circuit Courts in the State of Maryland, each representing a separate sentencing event. In fiscal year 2004 (July 1, 2003 – June 30, 2004), the SCCSP received approximately 12,000 such worksheets. These worksheets provide descriptive information on each sentenced offense, the sentenced offender, and the actual sentence of the court. Data collected from the worksheets allow the SCCSP to determine how many cases fall within, below, or above the guidelines range. The Commission has been working towards a benchmark or standard compliance rate of 65% of cases sentenced within the guideline range and 35% of cases below or above the range. In fiscal year 2004, the State's aggregate rate of compliance (76.3%) met this benchmark standard. However, standard compliance dropped slightly from the aggregate rate of 81.5% for fiscal year 2003. In the past two years, departure rates have fluctuated by 5 percentage points. Most circuits experienced a slight decrease in compliance rates in 2004.

Judicial departure rates for fiscal year 2004 by general offense type (person, drug, property) indicated sentences for person offenses were more likely to be within the guidelines than the other two offense types. Drug offenses had the most downward departures, while property offenses had more upward departures.

Further comparison of judicial departure rates by mode of disposition (plea agreement, plea without agreement, jury trial, or court trial) revealed that sentences imposed as a result of a plea agreement were most likely to fall within the recommended sentencing guidelines range. Upward departures were most common among cases resolved by a jury trial.

Unfortunately, the Commission is unable to fully or accurately report on sentences after reconsideration as a result of a continued failure of the courts to submit guidelines worksheets regarding these events. The SCCSP will continue to encourage full compliance with the current reporting process and continue to streamline that process to better capture data on sentence reconsideration.

In 2005, the SCCSP will examine possible adjustments to the sentence ranges within each cell of the guidelines matrices, continue to examine the incorporation of correctional options into the matrices, and continue to further develop a correctional population simulation model to help the Commission assess recommendations for legislation or amendments to the sentencing guidelines. New reports on sentencing-related issues and concerns will be posted on the SCCSP website on a regular basis. The SCCSP will begin to report victim economic loss data in cases of theft and fraud related crimes. Additionally, SCCSP staff will continue work with the University of Maryland's Office of Academic Computing Services to develop a web-based automated guidelines submission process and plans to pilot the on-line process. The SCCSP will continue to work diligently to fulfill its legislatively mandated mission promoting statewide fair, proportional and non-disparate sentencing policies and procedures.

THE STATE COMMISSION ON CRIMINAL SENTENCING POLICY

Establishment and Charge of the State Commission

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

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

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

SCCSP Composition

In 2004, the SCCSP was composed of 19 voting and 3 ex officio members listed on the next page. The Chairman, the Honorable Raymond G. Thieme, was appointed by the Governor in August 2003 to lead the State Commission on Criminal Sentencing Policy.

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

| | |
|----------------------------------------------------------------------------------------|-----------------------------------|
| <i>Members Appointed by the Governor</i> | |
| Chair | Honorable Raymond G. Thieme |
| State's Attorney | Honorable Robert Riddle |
| Criminal Defense Attorney | Richard A. Finci, Esquire |
| Victims' Advocacy Group | Russell P. Butler, Esquire |
| Law Enforcement | Chief Gary W. McLhinney |
| Criminal Justice or Corrections Policy Expert | Charles F. Wellford, Ph.D. |
| Local Detention Center | Barry L. Stanton |
| Public | Janis Judson, Ph.D. |
| Public | James V. Anthenelli, Esquire |
| <i>Members Appointed by the Chief Judge of the Court of Appeals of Maryland</i> | |
| Appellate Courts | Honorable Arrie W. Davis |
| Circuit Court | Honorable John C. Themelis |
| District Court | Honorable Timothy J. Doory |
| <i>Members Appointed by the President of the Senate</i> | |
| Senator | Honorable Delores G. Kelley |
| Senator | Honorable John A. Giannetti |
| <i>Members Appointed by the Speaker of the House</i> | |
| Delegate | Honorable Curtis S. Anderson |
| Delegate | Honorable Joseph F. Vallario, Jr. |
| <i>Ex-Officio Members</i> | |
| Attorney General | J. Joseph Curran, Jr. |
| State Public Defender | Nancy S. Forster, Esq. |
| Secretary of Public Safety & Correctional Services | Mary Ann Saar |

SCCSP Authorizations

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

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

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

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

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

SCCSP Activities in 2004

As usual, 2004 was a busy year and a period of transition for the SCCSP. In July, Dr. David Soulé started as the new Executive Director, replacing his predecessor, Dr. Michael Connelly, who left the SCCSP in January 2003. The Commission's activities, described below, ranged from classification of new offenses from the 2004 General Assembly to the continued development of a web-based worksheet submission process.

Legislation Considered. In 2004, the SCCSP reviewed and made the necessary revisions to respond to House Bill 918, which was passed by the General Assembly. House Bill 918 called for the SCCSP to include an entry location on the guidelines worksheet to report the specific dollar amount of the economic loss to the victim in crimes of theft and fraud.

COMAR. The SCCSP prepared for submission into COMAR its decisions on the classification of seriousness category for all new and revised criminal offenses passed by the General Assembly in 2004. Additionally, the SCCSP defined "economic loss" in response to House Bill 918 and voted on a revised format of the guidelines worksheet to capture this information. Implementation of the new classifications, the "economic loss" definition, and the revisions to the guidelines worksheet is expected in January 2005.

Training and materials. SCCSP staff continued in its core work of supplying training and materials on the sentencing guidelines throughout the State. SCCSP staff was available on a daily basis to answer questions regarding the sentencing guidelines manual and to provide any requested training materials. Additionally, the SCCSP continued to update the sentencing guidelines manual in preparation for the release of a revised version as soon as the latest COMAR changes are adopted. Dr. Soulé also met with each of the eight Circuit Administrative judges to introduce himself and address any issues or concerns regarding the SCCSP and the sentencing guidelines. Finally, the SCCSP was shown a demonstration of an on-line automated worksheet process created by the University of Maryland's Office of Academic Computing Services. The process of developing that system continues with the expectation that a web-based guideline calculation and submission process will simplify and enhance the usage of Maryland's sentencing guidelines.

Subcommittee work. The SCCSP's subcommittee on sentencing guidelines was responsible for the initial review and consideration of the COMAR submissions described above and later adopted by the full Commission. In addition, the subcommittee reviewed actual sentences of the circuit courts utilizing statistical data for comparison purposes. These analyses allowed preliminary consideration of recommendations for future adjustment of sentencing ranges within each matrix. Finally, the subcommittee drafted a public information dissemination policy, which was adopted by the full Commission at its October 4, 2004 meeting.

Special reports. The SCCSP continued the periodic production of the "Sentencing Fax" publication in 2004. These reports, generated by full-time staff and University of Maryland interns, are published on the SCCSP website and provide data specific to each of the twenty-four counties in Maryland.

Judicial Departure from Maryland's Voluntary Sentencing Guidelines

The SCCSP has been charged with the responsibility of examining judicial departures based on data extracted from the sentencing guidelines worksheets submitted after each defendant is sentenced in circuit court. The Administrative Office of the Courts (AOC) compiled this data between July 1983 and June 2000. Beginning in July 2000, the SCCSP assumed the responsibility of compiling this data from worksheets. Since that time, the SCCSP has continued to work on merging the two databases and checking for errors. In the process, corrections have been made to the database and additional worksheets have been located and incorporated which may affect the overall totals reported in previous reports.

Analyses of judicial departures in Maryland have traditionally focused on sentences for single count convictions because they permit the most direct comparison of departures by crime category and by offense type, within the applicable cell of the sentencing matrix. Since multiple count convictions can consist of any combination of person, drug, and property offenses, meaningful interpretations of sentencing patterns within matrices cannot be obtained. Additionally, as a result of inadequate record keeping to reliably capture the complex data necessary to distinguish between multiple sentences that run consecutively and concurrently during particular years, the present report does not include analysis of multiple count convictions.

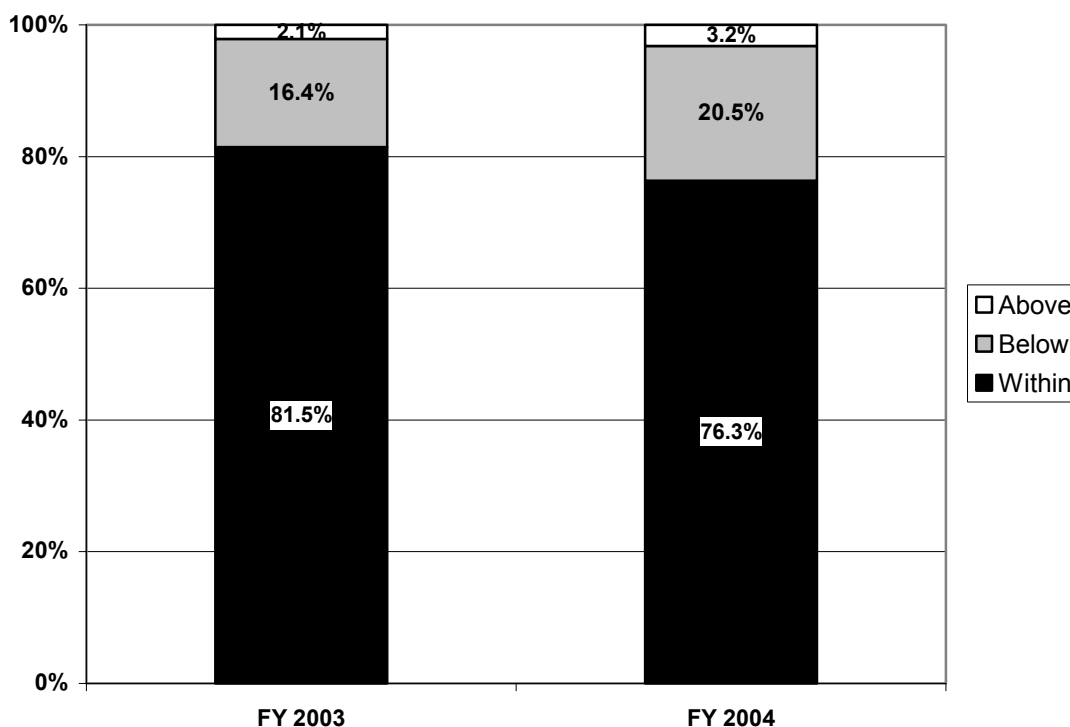
Thus, the present examination of judicial departure rates will focus on sentences for single count convictions during fiscal years 2003 and 2004. Single count convictions regularly account for approximately 75% of the total number of guidelines worksheets submitted each year. For example, of the 12,375 sentencing guidelines worksheets submitted to the SCCSP in 2004, 9,235 (74.6%) contained single count convictions.

Judicial Departure Rates Overall

Historically, judicial departure rates from the applicable guideline range have been high. For example, over a ten year period (1987-1996), the aggregate departure rate across all crime categories was 45%. During this period of time, departures from the applicable guidelines range were more likely to be below that range. In 2001, the SCCSP determined that such frequent downward departures were partially the result of sentences to correctional options programs (e.g. substance abuse treatment). In recognition of the policy interests in promoting the use of correctional options, the Commission voted to deem all such sentences compliant with the guidelines even when the actual length of the disposition to such programs did not fall within the otherwise applicable guideline range. Similarly, all sentences pursuant to an American Bar Association (ABA) plea agreement were deemed compliant as they represent an accurate reflection of the consensus of the parties and the court within the specific community they represent. As a result of these changes, guidelines departure rates have met the Commission's benchmark standard of 65% compliance.

Figure 1 provides a breakdown of the overall guidelines departure rates for fiscal years 2003 and 2004. In previous annual reports, the SCCSP has reported guidelines departure rates based on calendar years. Since the Commission has now “caught up” with the data entry process, the current analysis provides fiscal year comparisons. Fiscal year comparison was deemed more appropriate since other reports examining court related statistics (e.g. the Maryland Judiciary Annual Report) utilize this approach. The analysis shows that over the past two years, aggregate departure rates have increased 5.2%. However, the overall rate of compliance (76.3%) remains above the Commission’s goal of 65% compliance.

Figure 1. Sentencing Guidelines Departure by Fiscal Year



As shown in Figure 2, only the Fifth Circuit (69.9%) had an increase in their compliance rates in fiscal year 2004. The remaining seven Circuits experienced a range of decrease in compliance rates from as little as 1.2% for the First Circuit to as high as 4.7% for both the Sixth and Eighth Circuits. The Seventh Circuit continued to lead all circuits with the highest fiscal year 2004 compliance rate of 87.3%. The First Circuit had the second highest compliance rate (84.5%). The Third Circuit (63.6%) was the sole Circuit to fall short of the 65% compliance benchmark, but only by a very small margin.

Figure 2. Sentencing Guidelines Departures by Circuit and Fiscal Year

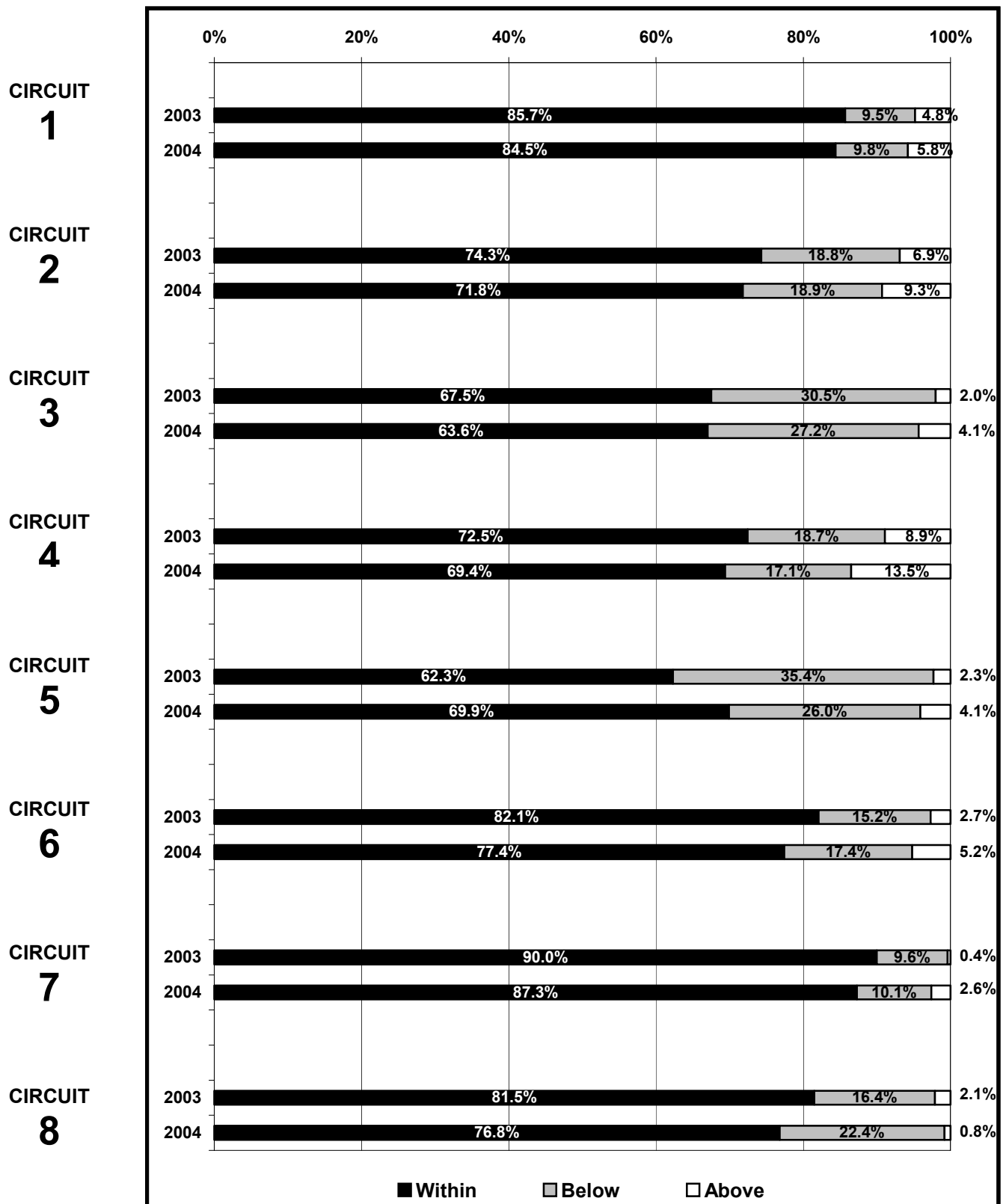


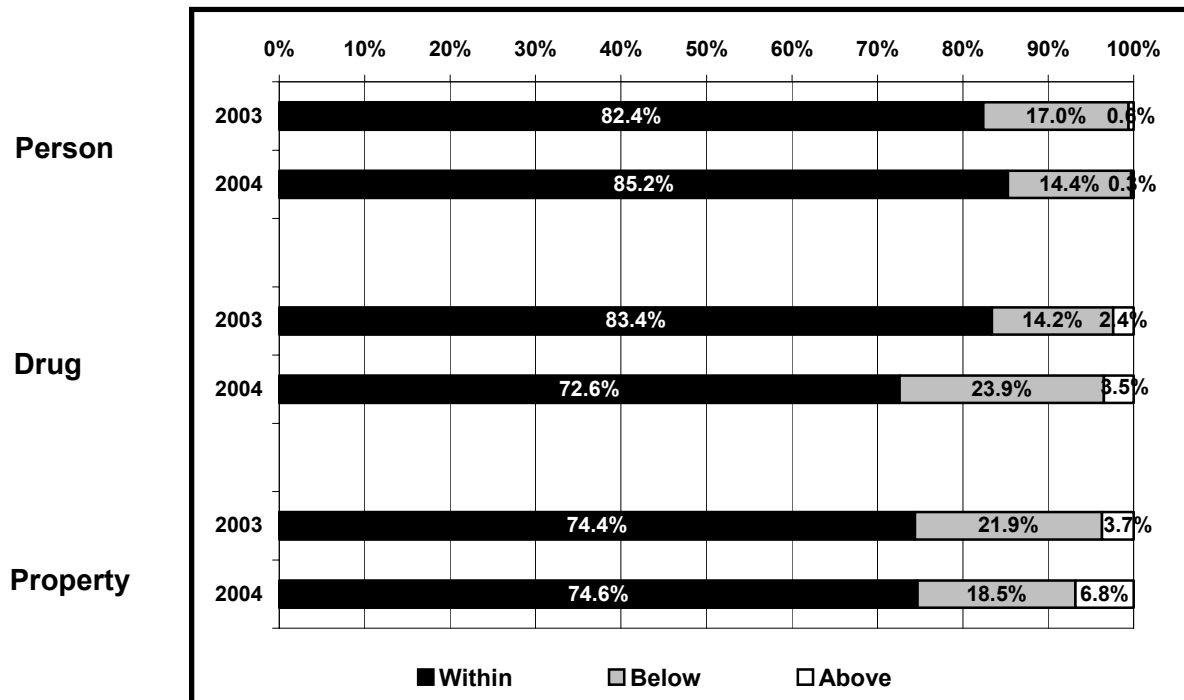
Table 2. Maryland Judicial Circuits

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

Judicial Departure Rates by Crime Category

Figure 3 examines judicial departures by crime category during the past two fiscal years. Between fiscal years 2003 and 2004, person offenses experienced a slight increase in compliance from 82.4% to 85.2%. Drug offense compliance rates decreased by 10.8% in fiscal year 2004. Lastly, within-guidelines property cases remained at a near constant compliance level (74.6%) in fiscal year 2004. However, upward departures increased in the property offense category by 3.1% while downward departures decreased at a similar rate.

Figure 3. Sentencing Guidelines Departures by Crime Category and Fiscal Year



Judicial Departure Rates by Type of Disposition

Figure 4 provides a breakdown of case disposition types from fiscal year 2004. The vast majority of cases were resolved by a plea agreement (83%). An additional 15% were resolved by a plea with no agreement and 2% of cases were resolved by either bench or jury trial (1% each, respectively).

Figure 4. Type of Disposition, Fiscal Year 2004

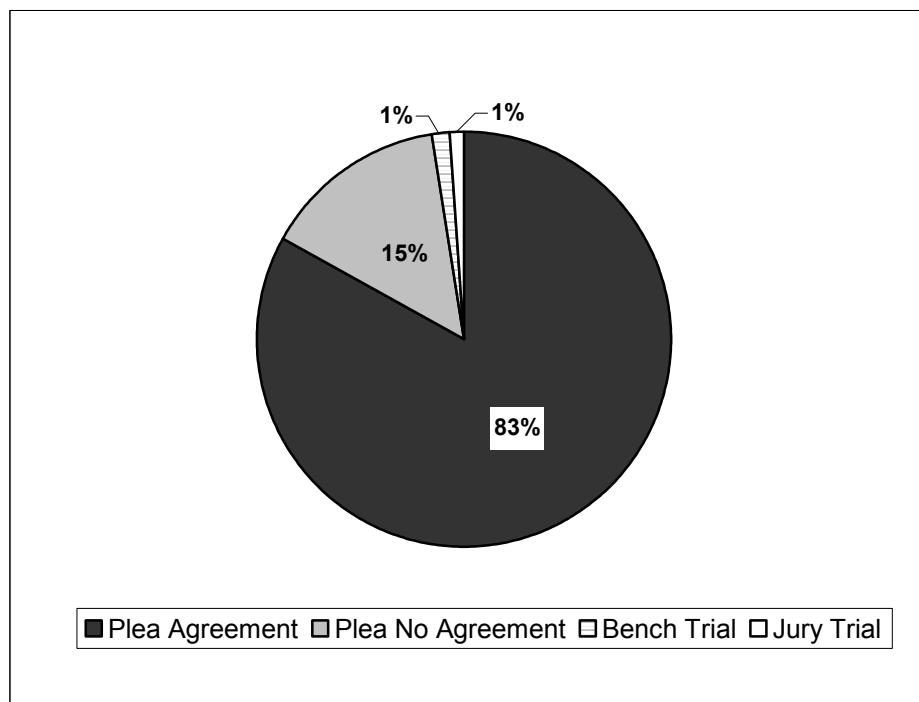


Figure 5 examines the extent to which judicial departure rates varied by mode of disposition (i.e., plea agreement, plea without agreement, jury trial, and court trial) during fiscal year 2004. The highest compliance rates occurred within plea agreements with 85.3% of such sentences falling within the prescribed guidelines range. Jury trials (68.3%) and bench trials (65.5%) were also above the 65% compliance benchmark. Overall, cases that were adjudicated by a plea, no agreement did not meet the benchmark compliance rate of 65% as only 39.5% of sentences in such cases fell within the applicable guidelines range. In this category of sentencing event, downward departures were more frequent than upward departures.

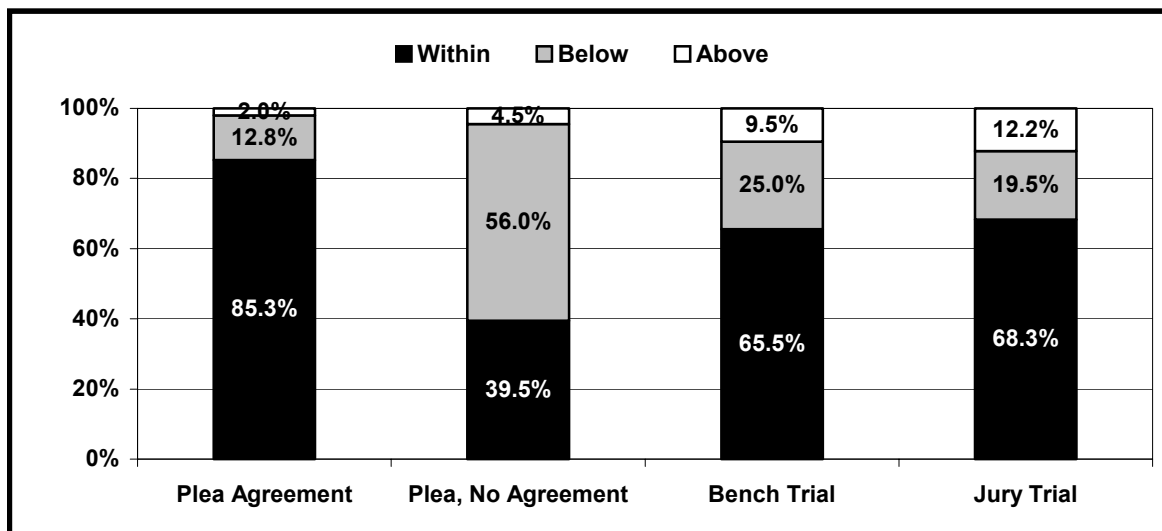
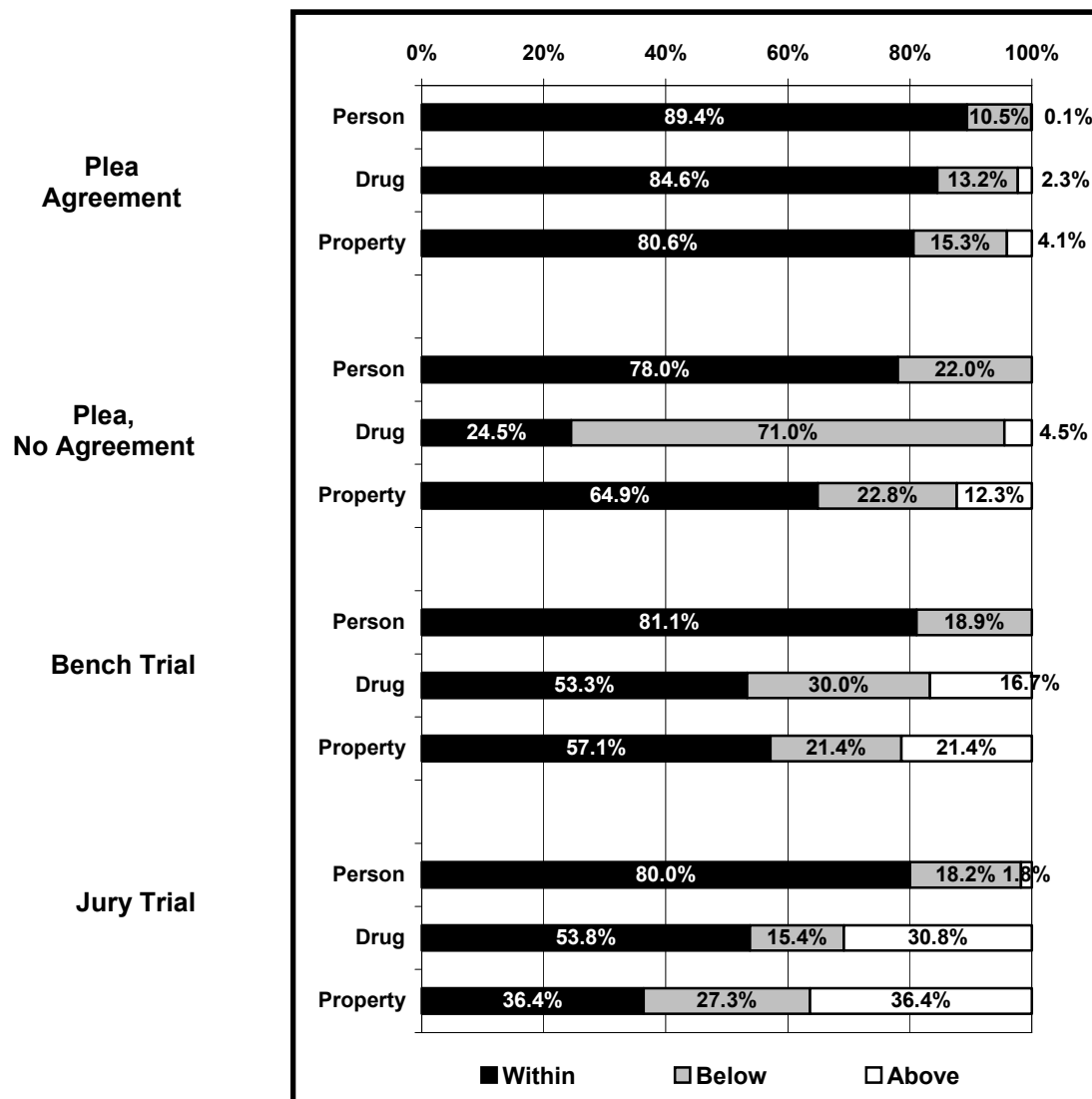
Figure 5. Sentencing Guidelines Departures by Type of Disposition, Fiscal Year 2004

Figure 6 provides a breakdown of departure rates by crime category and disposition. The majority of cases adjudicated by plea agreements for all three offense types were within the guidelines. Actual sentences in person (89.4%), drug (84.6%), and property (80.6%) offenses were all well above the benchmark of 65% compliance. A low percentage of drug offense cases adjudicated by plea with no agreement (24.5%) fell within the guidelines range, falling short of the 65% compliance goal. The majority of the drug cases settled by plea, no agreement (71.0%) were sentenced below the guidelines. The next disposition type, bench trials, had the majority of person offense sentences (81.1%) adjudicated within the sentencing guidelines. Drug (53.3%) and property (57.1%) bench trials cases were short of the compliance goal of 65%. Drug related bench trials had more departures (30%) below the guidelines than above. Bench trial property cases had an equal amount of cases above and below the guidelines (21.4%). Finally, jury trial cases followed the same pattern as other dispositions with the bulk of person offenses (80.0%) falling within the guidelines. Drug offense jury trial cases had 53.8% of cases within the guidelines, while property offenses (36.4%) adjudicated by jury trial were less likely to be compliant. The remaining departures for both drug and property offenses adjudicated in a jury trial fell mostly above the guidelines range (30.8% and 36.4% respectively).

Figure 6. Sentencing Guidelines Departures by Crime Category and Disposition, Fiscal Year 2004



Departure Reasons

COMAR regulation 14.22.01.05(A) directs the sentencing judge to document the reason or reasons for imposing a sentence outside of the recommended guidelines range on the guidelines worksheet. However, in 49.6% of the cases reported in fiscal year 2004 that resulted in a departure from the guidelines, the reason(s) for departure was not provided. Of those cases where a reason was provided, Table 3 and Table 4 display the most common reasons given for departures from the guidelines. Table 3 provides a rank order of the most commonly cited mitigating reasons judges provided for cases where the sentence resulted in a downward departure. The most commonly cited reasons for downward departures were: 1) the parties reached a plea agreement that called for a reduced sentence (28.8%); 2) “other circumstances” (24.3%); 3) the offender’s commitment to substance abuse treatment or other therapeutic program (14.2%); and 4) a recommendation of the State’s Attorney or Parole/Probation (13.1%).

Table 3. Departure Reasons for Cases Below the Guidelines, Fiscal Year 2004*

| Mitigating Reasons | % |
|----------------------------------------------------------------------------------------------------|----------|
| The parties reached a plea agreement that called for a reduced sentence. | 28.8% |
| Other circumstances of the crime and/or offenders do not warrant a sentence within the guidelines. | 24.3% |
| Offender's commitment to substance abuse treatment or other therapeutic program. | 14.2% |
| Recommendation of the State's Attorney or Division of Parole and Probation. | 13.1% |
| Offender's minor role in the offense. | 8.2% |
| Offender had diminished capability for judgment. | 6.7% |
| Offender made restorative efforts after the offense. | 3.2% |
| Victim's participation in the offense lessens the offender's culpability. | 1.2% |
| Offender was influenced by coercion or duress. | 0.4% |

* Represents the most frequently cited responses provided by judges based on a list provided on the Sentencing Guidelines Departure Bench card. Multiple reasons may be cited in each case.

Table 4 provides a rank order of the most commonly cited aggravating reasons judges provided for cases where the sentence resulted in an upward departure. The most commonly cited reasons for departure above the guidelines were: 1) "other circumstances" (36.2%); 2) a recommendation of State's Attorney or Parole/Probation (31.9%); 3) the offender's major role in the offense; and 4) offender's significant participation in a major controlled substance offense.

Table 4. Departure Reasons For Cases Above the Guidelines, Fiscal Year 2004

| Aggravating Reasons | % |
|----------------------------------------------------------------------------------------------------|----------|
| Other circumstances of the crime and/or offenders do not warrant a sentence within the guidelines. | 36.2% |
| Recommendation of the State's Attorney or Division of Parole and Probation. | 31.9% |
| Offender's major role in the offense. | 9.6% |
| Offender's significant participation in major controlled substance offense. | 9.6% |
| The vicious and heinous nature of the conduct. | 5.3% |
| The level of harm was excessive. | 4.3% |
| Special circumstances of the victim. | 2.1% |
| Offender exploited a position of trust. | 1.1% |

Report on Adjustments from Reconsidered Sentences

In compliance with HB1143, passed by the Maryland General Assembly in 2002, the SCCSP continues to “review reductions or increases in original sentences” due to reconsideration of sentences in State circuit courts and to report those sentences in its Annual Report by offense type and circuit court. Table 5 indicates the submissions of explicitly noted reconsidered sentences received by the SCCSP for fiscal year 2004. The 47 cases displayed in the table were the only “reconsidered” cases submitted to the SCCSP during the last fiscal year.

Table 5. Case Reconsiderations, Fiscal Year 2004

| Circuit | Offense | Cases |
|----------------|------------------------------|--------------|
| FIRST | Child Abuse | 1 |
| SEVENTH | Child Abuse | 1 |
| | Assault 1 | 3 |
| | Assault 2 | 1 |
| | Reckless Endangerment | 1 |
| | Handgun sale | 1 |
| | Handgun use in COV | 3 |
| | Handgun wearing/carrying | 1 |
| | Murder 1 | 1 |
| | Murder 1, attempted | 1 |
| | Murder 2 | 1 |
| | Murder 2 attempted | 1 |
| | RDW | 5 |
| | Robbery | 3 |
| | Rape 1 | 1 |
| | Sex Offense 1 | 1 |
| | Sex Offense 3 | 3 |
| | Weapons | 1 |
| | CDS Distribution (Marijuana) | 2 |
| | CDS Distribution (Cocaine) | 2 |
| | CDS Distribution (Other) | 1 |
| | CDS Possession (Cocaine) | 1 |
| | Burglary 1 | 2 |
| | Burglary 2 | 3 |
| | Counterfeiting, forgery | 1 |
| | Violation Probation | 1 |
| | Unknown | 3 |
| EIGHTH | Robbery w/Deadly Weapon | 1 |

Reconsidered cases continue to be vastly under reported to the SCCSP throughout the State. Fiscal year 2004 had a slight increase in the actual number of reconsidered sentences reported to the SCCSP compared to fiscal year 2003, when 38 reconsidered sentences were reported and fiscal year 2002 when 27 were reported. However, the SCCSP will need to further examine the reporting process to find a way to capture the data on reconsiderations of sentence so that the Commission can provide an accurate portrait of the use of reconsidered sentences in the State circuit courts.

Summary

Judicial departure rates within the Maryland sentencing guidelines have now been tracked for more than 15 years. A study by the MCCSP over a 10-year period revealed that the aggregate departure rate across crime categories (45%) fell beyond 35%, a benchmark set by the MCCSP and adopted by the SCCSP. Departure rates were lowest for property offenses, followed by person offenses, and then drug offenses. When judges departed from the recommended sentencing guidelines range (regardless of crime category), they generally sentenced below the recommended range.

The current analysis revealed that, over the past two years, compliance rates have fluctuated. Aggregate compliance rates of judicial departures have remained above the benchmark of 65% after the SCCSP decided to accept all ABA pleas and sentences to certain specified correctional options programs as compliant. However, it should be noted that a direct comparison of compliance rates calculated prior to and after the 2001 change is not meaningful.

Between fiscal years 2003 and 2004, only one judicial circuit experienced an increase in guidelines compliance rates, while the remaining circuits all experienced slight decreases in compliance rates during this time. Despite these small decreases, all but one of the eight circuits met the benchmark rate of 65% guidelines compliance.

In fiscal year 2004, overall departures were least likely for person offenses and most likely for drug offenses. The overall departure rate for property offenses remained virtually unchanged over the past fiscal year. Upward departures were most common among property offenses, while downward departures were most common among drug offenses.

Comparison of judicial departure rates by type of disposition (plea agreement, plea without agreement, jury trial, or court trial) revealed that sentences imposed as a result of a plea agreement departed less than all other dispositions. Upward departures were most common among cases resolved by a jury trial and downward departures were most common for pleas with no agreement.

An examination of reasons of departure from the guidelines revealed the most commonly cited mitigating reason in fiscal year 2004 was that the parties reached a plea agreement that called for a reduced sentence. Other circumstance¹ of the crime and/or offense was a close second for the most commonly listed mitigating reason and was also the most common aggravating reason for departures above the guidelines. A recommendation of the State's Attorney or Parole/Probation was the next most common reason for departure above the guidelines.

¹ "Other" circumstances represent anything other than one of the sixteen mitigating and aggravating reasons provided on the Sentencing Guidelines Departure Bench Card. Given the high percentage of judges who cite "other" reasons for departure, the SCCSP staff will analyze the written description of these responses in 2005 in order to gain a more accurate portrait of the most commonly cited reasons for departure from the sentencing guidelines.

SCCSP Planned Activities for 2005

The SCCSP has an ambitious list of activities and goals on its agenda for 2005. In addition to the issues and concerns that develop throughout the typical year, the SCCSP will incorporate criminal offenses and changes in the criminal code passed by the General Assembly during the 2005 legislative session, classify these offenses for seriousness categories, and submit amendments to COMAR. The Sentencing Guidelines Subcommittee will continue to examine and consider possible adjustments to the sentence ranges in the cell of each guidelines matrix to make sure they effectively represent actual sentencing practice. The subcommittee will also further examine the inclusion of correctional options into the matrices. The SCCSP will begin to report on victim "economic loss" data in theft and fraud related offenses as mandated in House Bill 918, passed during the 2004 legislative session. Updated reports on sentencing-related issues and concerns will be posted on the SCCSP website on a regular basis for review by all interested persons and will include more "Sentencing FAX" reports.

On the list of long-term projects that will be addressed in 2005, the SCCSP will work on the creation of a correctional population simulation model to help generate fiscal impact statements for legislators when considering penalty provisions for criminal offenses or modification to sentencing practice. Additionally, SCCSP staff will work with the Administrative Office of the Courts to create a system to track circuit court cases in which guideline worksheets were not submitted in an attempt to improve the efficiency and accuracy of the data collected by the Commission. Furthermore, the Commission will continue to examine the guidelines worksheet submission process in an attempt to increase the reporting of specific fields or variables (e.g. victim information data, judicial reconsiderations, and reasons for departure from the guidelines) which are continually underreported to the SCCSP. Finally, the Commission will continue to work with the University of Maryland's Office of Academic Computing Services to develop a web-based guidelines calculation and submission process. SCCSP will further develop its training exercises and materials to ease and promote the use of the guidelines in all circuit courts and oversee implementation of the worksheet process on-line, while planning to "pilot" the web-based system in volunteer jurisdictions by the end of the year.

Corrections to the 2003 Annual Report

During preparation for the current annual report, SCCSP staff discovered a few errors that were reported in the 2003 Annual Report which are clarified below:

- Page II of the 2003 Annual Report indicated the SCCSP received approximately 19,000 worksheets in 2002. However, the actual number of worksheets received for calendar year 2002 was 13,449.
- Text on page III stated 6 cases were reported as reconsiderations in calendar year 2002. However, a total of 42 cases were reported as reconsiderations in 2002 as accurately displayed in Table 5 on page 11.