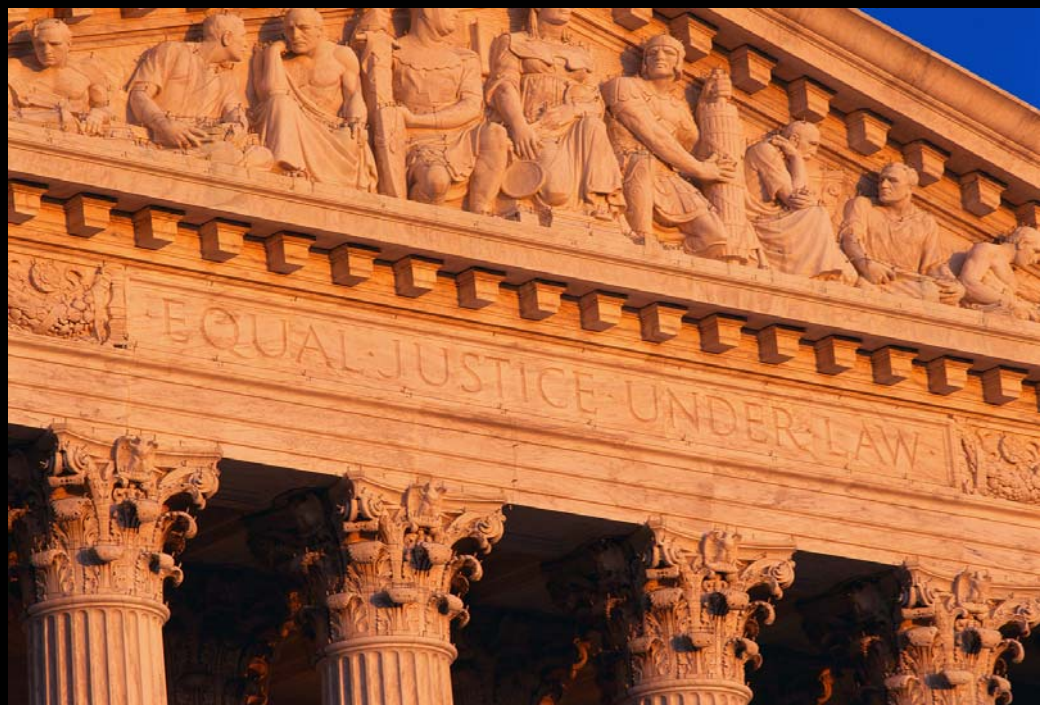


Maryland State Commission on Criminal Sentencing Policy



Annual Report 2008





Members Appointed by the Governor

Chairman

Honorable Howard S. Chasanow

State's Attorney

Leonard C. Collins, Jr., Esquire

Criminal Defense Attorney

Richard A. Finci, Esquire

Victims' Advocacy Group

Laura L. Martin, Esquire

Law Enforcement

Chief Marcus L. Brown

Criminal Justice or Corrections Policy Expert

Charles F. Wellford, Ph.D.

Local Detention Center

Major Bernard B. Foster, Sr.

Public Representatives

James V. Anthenelli, Esquire

Paul F. Enzinna, Esquire

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

Appellate Courts Representative

Honorable Arrie W. Davis

Circuit Court

Honorable John C. Themelis

District Court

Honorable John P. Morrissey

Members Appointed by the President of the Senate

Senators

Honorable Delores G. Kelley

Honorable Lisa A. Gladden

Members Appointed by the Speaker of the House

Delegates

Honorable Joseph F. Vallario, Jr.

Honorable Curtis S. Anderson

Ex-Officio Members

Attorney General

Honorable Douglas F. Gansler

(Mary Catherine O'Donnell, Esquire, Attorney General's Representative)

State Public Defender

Nancy S. Forster, Esquire

(Patrick Kent, Esquire, Public Defender's Representative)

Secretary of Department of Public Safety & Correctional Services

Gary D. Maynard

(Shannon E. Avery, Esquire, Secretary's Representative)

THE STAFF OF THE COMMISSION

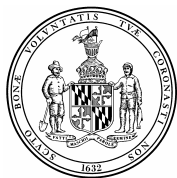
David A. Soulé, Ph.D., Executive Director

Stacy Skroban Najaka, Ph.D., Research Director

Jessica Rider, Administrative and Training Coordinator

Karlyn A. Sweetman, Policy Analyst

MSCCSP



Maryland State Commission on Criminal Sentencing Policy

Chairman

Hon. Howard S. Chasanow

Commissioners

Del. Curtis S. Anderson
James V. Anthenelli, Esq.
Chief Marcus L. Brown
Leonard C. Collins, Jr., Esq.
Hon. Arrie W. Davis
Paul F. Enzinna, Esq.
Richard A. Finci, Esq.
Major Bernard B. Foster, Sr.
Nancy S. Forster, Esq.
Hon. Douglas F. Gansler
Sen. Lisa A. Gladden
Sen. Delores G. Kelley
Laura L. Martin, Esq.
Sec. Gary D. Maynard
Hon. John P. Morrissey
Hon. John C. Themelis
Del. Joseph F. Vallario, Jr.
Charles F. Wellford, Ph.D.

Executive Director

David A. Soulé, Ph.D.

January 2009

To: The Honorable Martin J. O'Malley, Governor
The Honorable Robert M. Bell, Chief Justice of Maryland
The Honorable Members of the General Assembly of Maryland
The Citizens of Maryland

Pursuant to Criminal Procedure Article, §6-209, Annotated Code of Maryland, the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) is required to annually review sentencing policy and practice and report to the General Assembly. In compliance with this statutory mandate, we respectfully submit for your review the 2008 Annual Report of the MSCCSP.

This report details the work of the MSCCSP over the past year and provides an overview of circuit court sentencing practices and trends in Maryland for fiscal year 2008. The report provides a comprehensive examination of judicial compliance with the state's voluntary sentencing guidelines, describes information provided on the state's sentencing guidelines worksheets, and finally provides a description of planned activities for 2009.

The Commission wishes to acknowledge and thank those agencies and individuals whose contributions to the sentencing guidelines and corresponding guidelines worksheets enable us to produce this report. If you have any questions or comments regarding this report, please contact our office.

Sincerely,

Judge Howard S. Chasanow, (Ret.)
Chairman

University of Maryland
4511 Knox Road, Suite 309
College Park, MD 20742-8660
(301) 403-4165 / phone
(301) 403-4164 / fax
www.msccsp.org

TABLE OF CONTENTS

Executive Summary	iii
The Maryland State Commission on Criminal Sentencing Policy (MSCCSP)	1
Guidelines Background	1
Commission Background	2
Commission Structure	3
MSCCSP Activities in 2008	5
Modifications Related to New and Amended Offenses Passed During the 2008 Legislative Session.....	5
Additional Modifications to the Guidelines Offense Table in 2008	7
Guidelines Rules Modifications in 2008	8
Training and Education	9
Information and Data Requests.....	10
Data Collection, Oversight, and Verification.....	11
Subcommittee Work	12
Sentencing/Correctional Simulation Model	12
Maryland Automated Guidelines System (MAGS)	13
Public Comments Hearing.....	14
Sentences Reported in FY 2008	15
Worksheets Received	15
Case Characteristics	17
Judicial Compliance with Maryland's Voluntary Sentencing Guidelines	21
Judicial Compliance Rates Overall.....	21
Judicial Compliance Rates by Circuit.....	23
Judicial Compliance Rates by Crime Category	25
Judicial Compliance Rates by Type of Disposition.....	26
Judicial Compliance Rates by Crime Category and Disposition	27
Departure Reasons	29
Additional Information Collected in Response to Legislative Mandates	32
Report on Adjustments from Reconsidered Sentences	32
Economic Loss in Title 7 and Title 8 Crimes	33
MSCCSP Planned Activities for 2009	34

TABLE OF CONTENTS (CONTINUED)

Appendices	36
Appendix A: Sentencing Guidelines Matrices	37
Appendix B: Maryland Sentencing Guidelines Worksheet	40
Appendix C: Description of Types of Disposition	41
Appendix D: Sentencing Guidelines Compliance by Offense Type, FY 2008.....	42
Appendix E: Common Departure Reasons Listed on the Sentencing Guidelines Departure Reference Card	43

EXECUTIVE SUMMARY

Maryland's voluntary sentencing guidelines were initiated statewide in 1983. In determining the appropriate sentence range, the guidelines were designed to take both offender and offense characteristics into account. The guidelines determine whether an individual should be incarcerated and if so, provide a recommended sentencing range. Maryland's guidelines are voluntary and therefore judges may impose a sentence outside the prescribed guidelines range. However, judges are required to document the reason for sentencing outside the guidelines.

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) was created in 1999 to oversee sentencing policy and to monitor the state's voluntary sentencing guidelines. The General Assembly established six objectives to guide the work of the Commission, including, for example: (a) the reduction of unwarranted sentencing disparity; (b) the prioritization of prison usage for violent and career offenders; (c) the preservation of meaningful judicial discretion; and (d) the imposition of the most appropriate criminal penalties. The Commission consists of 19 members, including members of the judiciary, members who are active in the criminal justice system, members of the Senate of Maryland and House of Delegates, and representatives of the public.

The primary responsibilities of the MSCCSP include: collection and automation of the sentencing guidelines worksheets, maintaining the sentencing guidelines database, and conducting training and orientation for criminal justice personnel. In addition, the Commission monitors judicial compliance with the guidelines and adopts changes to the guidelines when necessary.

In 2008, the MSCCSP classified new and amended offenses passed by the General Assembly during the 2008 Legislative Session; reviewed and amended the classification of current offenses to ensure consistency among offenses with similar penalties; adopted slight modifications to the instructions for calculating the adult prior record score and victim psychological injury components of the sentencing guidelines; continued reporting on judicial compliance rates and victims' involvement in sentencing; provided data to state agencies and other interested parties; worked with Applied Research Services, Inc. to implement a sentencing/correctional simulation model; and partnered with the Technology and Communications Division of the Maryland Department of Public Safety and Correctional Services to finalize the development of an automated sentencing guidelines system. The

MSCCSP also provided training and orientation to promote the consistent application of the guidelines, as well as accurate and timely submission of sentencing guidelines worksheets. Finally, the MSCCSP worked to improve the accuracy of the sentencing guidelines data by completing several data reviews and data entry enhancements.

In fiscal year 2008, the MSCCSP received 11,658 sentencing guidelines worksheets for offenders sentenced in the state's circuit courts. The vast majority of cases were resolved by either an American Bar Association (ABA) plea agreement (51.5%) or a non-ABA plea agreement (28.5%). Approximately half of convicted defendants (52.9%) were sentenced to both incarceration and probation (as opposed to incarceration only, probation only, or neither). The overall guidelines compliance rate in fiscal year 2008 well exceeded the Commission's goal of 65% compliance. When departures occurred, they were more often below the guidelines rather than above. All eight judicial circuits met the benchmark rate of 65% compliance, and three experienced an increase in guidelines compliance rates in fiscal year 2008. The circuit with the largest number of defendants, the Eighth Circuit, had the highest compliance rate.

Departures were least likely for drug offenses, followed by person offenses and property offenses. A comparison of judicial compliance rates by type of disposition (plea agreement, plea with no agreement, bench trial, and jury trial) showed that compliance was most likely in cases adjudicated by a plea agreement. In contrast, compliance was least likely in cases adjudicated by a bench trial, and downward departures were more common than upward departures among these cases. When compliance rates by both crime category and disposition were considered, the highest compliance rate was observed for drug offenses disposed of by a plea agreement. Property offenses adjudicated by a bench trial had the lowest compliance rate, and all departures in this category were sentenced below the guidelines.

Reasons for departure continued to be underreported in fiscal year 2008. When sentences departed from the recommended guidelines range, the reason for departure was missing in the majority of cases sentenced. When reported, the most commonly cited reason for departures both below and above the guidelines was a recommendation of the State's Attorney or Division of Parole and Probation.

In 2009, the MSCCSP will continue to review sentencing practice throughout the state and will provide training and orientation to ensure the consistent application of the sentencing guidelines. The Commission will update the Sentencing Guidelines Manual to incorporate modifications to the guidelines adopted at the end of 2008. Additionally, the Guidelines

Subcommittee will review new and revised offenses adopted by the General Assembly in 2009 and examine the application of the guidelines to specific offenses such as theft involving large dollar amounts, while the Subcommittee on Sentencing Drug Offenders will continue to assess sentencing options for the state's drug offending population. In August, the MSCCSP will host the National Association of Sentencing Commissions (NASC) annual conference, providing an opportunity for Maryland's criminal justice community to share with and learn from a prominent group of national sentencing policy experts. This sample of planned activities illustrates some of the efforts to be completed by the MSCCSP in 2009 to continue to work diligently to fulfill its legislatively mandated mission to promote statewide fair, proportional, and non-disparate sentencing policies and procedures.

THE MARYLAND STATE COMMISSION ON CRIMINAL SENTENCING POLICY (MSCCSP)

Guidelines Background

Maryland was one of the first states to initiate a sentencing guidelines system. The concept of judicial sentencing guidelines was introduced in the late 1970s by the judiciary in response to judicial perceptions of unwarranted sentencing disparity. The Judicial Committee on Sentencing was formed by the Court of Appeals and a host of alternative sentencing systems were studied (e.g., determinate sentencing, mandatory sentencing, sentencing councils). In April 1979, the Committee approved a system of voluntary sentencing guidelines for use in circuit courts only. The sentencing guidelines were first piloted in four jurisdictions and were adopted statewide in 1983. In determining the appropriate sentence range, the guidelines were designed to take both offender and offense characteristics into account.

The voluntary sentencing guidelines cover offenses divided into three categories: person, drug, and property. The guidelines determine whether an individual should be incarcerated and if so, provide a sentence length range. For each offense category there is a separate grid or matrix, and there is recommended sentence range in each cell of the grid. Appendix A includes a copy of the three sentencing matrices. The sentence recommendation is determined in the grid by the cell that is the intersection of an offender's offense score and offender score. In drug and property offenses, the offense score is determined by the seriousness of the offense (or "seriousness category"). In offenses against persons, the offense score is determined by the seriousness of the offense, the physical or mental injury to the victim, the weapon used, and any special vulnerability of the victim, such as being under eleven years old, 65 years or older, or physically or mentally disabled. The offender score is a calculation of the individual's criminal history and is determined by whether or not the offender was in the criminal justice system at the time the offense was committed (i.e., on parole, probation, or on temporary release from incarceration, such as work release), has a juvenile record or prior criminal record as an adult, and has any prior adult parole or probation violations.

The guidelines sentence range represents only non-suspended time. The sentencing guidelines are advisory and judges may, at their discretion, impose a sentence outside the guidelines. If a judge chooses to depart from the sentencing guidelines, the Code of Maryland Regulations (COMAR) 14.22.01.05(A) mandates that the judge document the reason or reasons for imposing a sentence outside of the recommended guidelines range.

Commission Background

The Maryland General Assembly created the State Commission on Criminal Sentencing Policy (MSCCSP) in May 1999, after a study commission (the Maryland Commission on Criminal Sentencing Policy) recommended the creation of a permanent commission in its final report to the General Assembly. The MSCCSP was created to oversee sentencing policy in Maryland and is primarily responsible for maintaining and monitoring the state's voluntary sentencing guidelines. The enabling legislation for the MSCCSP (Criminal Procedure Article, §§6-201 - 6-214, Annotated Code of Maryland) set out six legislative goals for sentencing in Maryland, stating that:

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

The MSCCSP was designed and authorized with the purpose of fulfilling the above legislative intentions. The General Assembly authorized the MSCCSP to “adopt existing sentencing guidelines for sentencing within the limits established by law which shall be considered by the sentencing court in determining the appropriate sentence for defendants who plead guilty or nolo contendere to, or who were found guilty of crimes in a circuit court.” The MSCCSP also has authority to “adopt guidelines to identify defendants who would be appropriate for participation in corrections options programs.” These guidelines are to be considered by the sentencing court in selecting either the ordinary guidelines sentence for a defendant or sanctions under corrections options.

The Commission is responsible for the collection and automation of sentencing guidelines data. All sentencing guidelines data is provided on the sentencing guidelines worksheet, which is completed to determine the recommended sentencing guidelines outcome and to record sentencing data for offenses prosecuted in circuit court. A copy of the Maryland sentencing guidelines worksheet is provided in Appendix B. After worksheets are completed, the sentencing judge is expected to review the worksheet for completeness and accuracy (COMAR 14.22.01.03.D(4)) and a hard copy is mailed to the Commission's office. The Commission staff is responsible for data entry and monitoring of all data collected within the guidelines worksheets. Data collected by the Commission permit analysis of sentencing trends with respect to compliance with the guidelines, particular offenses, specific types of offenders, and geographic variations. The MSCCSP utilizes the guidelines data to monitor circuit court sentencing practice and to adopt changes to the guidelines consistent with legislative intent when necessary. The data collected are also expected to support the legislatively mandated use of a correctional population simulation model designed to forecast prison bed-space and resource requirements. The Legislature mandated that forecasts exceeding available state resources would have to include alternative guidelines recommendations to bring prison populations into balance with state resources.

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

Commission Structure

The Commission consists of 19 members, including members of the judiciary, members who are active in the Maryland criminal justice system, members of the Senate of Maryland and House of Delegates, as well as public representatives.

The Honorable Howard S. Chasanow was appointed as chairman of the MSCCSP by Governor Martin O'Malley in June 2007. Other Governor appointees include James V. Anthenelli and Paul F. Enzinna who serve as the two public representatives on the Commission; Chief Marcus L. Brown from the Maryland Transportation Authority Police; Major Bernard B. Foster, Sr., Director of the Cecil County Detention Center; Leonard C. Collins, Jr., State's Attorney for Charles County; Richard A. Finci, a criminal defense attorney from Prince George's County;

Laura L. Martin, the victims' advocacy group representative; and Dr. Charles F. Wellford from the University of Maryland, the criminal justice or corrections policy expert.

The Chief Judge of the Court of Appeals of Maryland is responsible for three appointments to the Commission. Judicial appointees include Judge Arrie W. Davis, Court of Special Appeals of Maryland; Judge John C. Themelis, Circuit Court of Baltimore City; and Judge John P. Morrissey from the District Court of Prince George's County.

The President of the Senate is responsible for two appointments; Senators Delores G. Kelley and Lisa A. Gladden. The Speaker of the House is also responsible for two appointments; Delegates Joseph F. Vallario, Jr. and Curtis S. Anderson.

Finally, ex-officio members include the State's Attorney General, Douglas F. Gansler; the State Public Defender, Nancy S. Forster; and the Secretary of the Department of Public Safety and Correctional Services, Gary D. Maynard.

MSCCSP ACTIVITIES IN 2008

The MSCCSP met four times during 2008. Meetings were held on May 5, 2008, July 8, 2008, September 23, 2008, and December 9, 2008. In addition, the Commission's annual Public Comments Hearing was held on September 23, 2008 at the House Office Building. The minutes for all Commission meetings are posted on the Commission's website (www.msccsp.org). The following discussion provides a review of the Commission's activities in 2008.

Modifications Related to New and Amended Offenses Passed During the 2008 Legislative Session

The MSCCSP considered new crime legislation from the 2008 Legislative Session and identified six bills (thirteen offenses) which required the adoption of seriousness categories for new criminal penalties. Newly adopted seriousness categories were recommended by reviewing the seriousness categories for similar offenses (i.e., offenses with similar penalties, misdemeanor/felony classification, and crime type) previously classified by the Commission. The new offenses and their respective seriousness categories shown in Table 1 were submitted to the Administrative, Executive, and Legislative Review (AELR) Committee and were adopted in the Code of Maryland Regulations (COMAR) effective December 1, 2008.

Table 1. Guidelines Offenses and Adopted Seriousness Categories Related to New Offenses, 2008 Legislative Session.

Legislation	Statute	Offense	Adopted Seriousness Category
House Bill 550	CR, §8-606.1	Counterfeiting Forge, falsify, or counterfeit the signature of a judge, court officer, or court employee; or use a document with forged signature of a court official	VI
House Bill 626	BO, §17-613(a)	Commercial Fraud, Other Violation of certain provisions of the Maryland Real Estate Brokers Act, 1 st offense ^a	VII
House Bill 626	BO, §17-613(d)(1)	Commercial Fraud, Other Violation of certain provisions of the Maryland Real Estate Brokers Act, 2 nd offense	VII

^a This is not a new offense, but it was not previously listed in the Guidelines Offense Table. The Legislature created additional penalties for 2nd and 3rd or subsequent violations.

Table 1 continued.

Legislation	Statute	Offense	Adopted Seriousness Category
House Bill 626	BO, §17-613(d)(2)	Commercial Fraud, Other Violation of certain provisions of the Maryland Real Estate Brokers Act, 3 rd or subsequent offense	VI
House Bill 1113	CR, §8-301(d) CR, §8-301(g)(2) (penalty)	Identity Fraud Use a re-encoder or skimming device for purpose of identity theft. Benefit less than \$500	VII
House Bill 1113	CR, §8-301(d) CR, §8-301(g)(1) (penalty)	Identity Fraud Use a re-encoder or skimming device for purpose of identity theft. Benefit \$500 or greater	V
House Bill 1113	CR, §8-301(e) CR, §8-301(g)(4) (penalty)	Identity Fraud Possess, obtain, or help another obtain a re-encoder or skimming device for purpose of identity theft	VII
Senate Bill 211	PS, §2-512(c), (e)	Statewide DNA Data Base System, Crimes Involving Willfully testing DNA for information not related to identification of individuals	V
Senate Bill 217	RP, §7-407(a)	Commercial Fraud, Other Commission of mortgage fraud	V
Senate Bill 217	RP, §7-407(b)	Commercial Fraud, Other Commission of mortgage fraud, involving victim who is a vulnerable adult under CR, §3-604	V
Senate Bill 217	RP, §7-407(c)	Commercial Fraud, Other Commission of mortgage fraud, engaging in a pattern of mortgage fraud	IV
Senate Bill 218	RP, §7-318.1(a) RP, §7-321 (penalty)	Commercial Fraud, Other Failure of foreclosure consultant to obtain a real estate broker's license	VI
Senate Bill 218	RP, §7-318.1(b) RP, §7-321 (penalty)	Commercial Fraud, Other Violation of any provision of Business Occupations and Professions Article, Title 17, by foreclosure consultant	VI

The MSCCSP considered amended crime legislation from the 2008 Legislative Session and identified two bills (three offenses) which required the adoption of seriousness categories for altered criminal penalties. House Bill 719 increased the maximum imprisonment term for *attending a dogfight or cockfight* from ninety days to one year and raised the maximum fine from \$1,000 to \$2,500. Senate Bill 211 increased the maximum imprisonment term for *improper disclosure of DNA information to a person/agency not entitled to receive the information* and *fraudulent obtainment of DNA information from the Statewide DNA data base/repository* from

three years to five years and raised the maximum fine from \$1,000 to \$5,000. The bill also increased the classification of both offenses from misdemeanor to felony. Newly adopted seriousness categories were recommended by reviewing the seriousness categories for similar offenses (i.e., offenses with similar penalties, misdemeanor/felony classification, and crime type) previously classified by the Commission. The three offenses and their respective seriousness categories shown in Table 2 were submitted to the AELR Committee and were adopted in the COMAR effective December 1, 2008.

Table 2. Guidelines Offenses and Adopted Seriousness Categories Related to Amended Offenses, 2008 Legislative Session.

Legislation	Statute	Offense	Prior Seriousness Category	New Seriousness Category
House Bill 719	CR, §10-605	Animals, Crimes Against Attending a dogfight or cockfight	Not Previously Categorized	VII
Senate Bill 211	PS, §2-512(a), (e)	Statewide DNA Data Base System, Crimes Involving Improper disclosure of DNA information to a person/agency not entitled to receive the information	Not Previously Categorized	V
Senate Bill 211	PS, §2-512(b), (e)	Statewide DNA Data Base System, Crimes Involving Fraudulent obtainment of DNA information from the Statewide DNA data base/repository	Not Previously Categorized	V

Additional Modifications to the Guidelines Offense Table in 2008

In its continued review of seriousness categories for all criminal offenses sentenced in the state's circuit courts, the MSCCSP identified one offense that should be added to the Guidelines Offense Table for clarification and one offense the Commission determined was not currently assigned a seriousness category consistent with those for "similar" offenses with "like" maximum penalties. At the July 8, 2008 meeting, the MSCCSP voted to add *conspiracy to 1st degree murder* so that it is clear that it is a seriousness category I offense. This offense was added to the table effective December 1, 2008. At the December 9, 2008 meeting, the MSCCSP voted to adopt a change in the seriousness category for *conducting the business of automotive dismantler or recycler without a license* as noted in Table 3. This change was made to maintain consistency with other "similar" offenses with "like" maximum penalties. The change was submitted to the AELR Committee and is expected to be adopted in the COMAR on April 1, 2009.

Table 3. Offense Seriousness Categories Modified and Adopted by the MSCCSP in 2008.

Statute	Offense	Prior Seriousness Category	New Seriousness Category
TR, §27-101(i)(2) TR, §15-502(a)	Motor Vehicle Offense Conduct the business of an automotive dismantler and recycler or a scrap processor without a license, subsequent	VI	VII

The MSCCSP also identified five destructive devices offenses that the Commission determined were not currently assigned an offense type category consistent with those for “similar” offenses and adopted the changes noted in Table 4. These changes were submitted to the AELR Committee and are expected to be adopted in the COMAR on April 1, 2009.

Table 4. Offense Type Categories Modified and Adopted by the MSCCSP in 2008.

Statute	Offense	Prior Offense Type	New Offense Type
CR, §4-503(a)(1)	Destructive Devices Manufacture, transport, possess, control, store, sell, distribute, or use a destructive device	Property	Person
CR, §4-503(a)(2)	Destructive Devices Possess explosive, incendiary, or toxic material with the intent to create a destructive device	Property	Person
PS, §11-114(a), (g)	Destructive Devices Explosives—unlawful manufacture or dealing without license	Property	Person
PS, §11-114(b), (g)	Destructive Devices Explosives—possession without a license	Property	Person
PS, §11-114(c), (g)	Destructive Devices Explosives—sale without license	Property	Person

Guidelines Rules Modifications in 2008

In 2008, the MSCCSP revised the rule concerning the use of probations before judgment (PBJ) in the calculation of the prior adult criminal record for the Maryland Sentencing Guidelines Worksheet. The revised language states that when calculating the prior adult criminal record, PBJs and convictions under the Federal Youth Corrections Act (FYCA) shall be included unless they are expunged from the record or proven by the defense to have been eligible for expungement prior to the date of the offense pursuant to Criminal Procedure Article §§10-101 – 10-105, Annotated Code of Maryland. Prior to this revision, PBJ dispositions were excluded as prior convictions only if formally expunged by order of the

court. This change was submitted to the AELR Committee and adopted in the COMAR effective September 8, 2008.

At the December 9, 2008 meeting, the MSCCSP voted to adopt a minor modification to the instructions for calculating victim injury in the Offense Score for person offenses. The language was modified to allow counseling services, such as rape crisis hotlines and conferences with clergy, to be included as evidence of psychological injury to the victim. This change addresses a barrier faced by indigent victims who can not afford medical diagnosis or psychological treatment by allowing confirmed counseling services obtained at no cost to be included when determining whether one point should be awarded in the victim injury component of the Offense Score. This change was submitted to the AELR Committee and is expected to be adopted in the COMAR effective April 1, 2009.

Training and Education

The MSCCSP provides sentencing guidelines training and education in an effort to promote the consistent application of the guidelines and accurate completion of the guidelines worksheet. At the forefront of the Commission's educational tools is the Commission's website (www.msccsp.org) which was routinely updated in 2008. The website includes helpful material for criminal justice practitioners regarding the application of the guidelines, including text-searchable and print-friendly copies of the most recent version of the Maryland Sentencing Guidelines Manual and the Guidelines Offense Table, a list of offenses with non-suspendable mandatory minimum penalties, a list of offenses with seriousness category revisions, a sample of Frequently Asked Questions (FAQ) and their respective answers, and other relevant reports.

In 2008, the Commission staff provided nine guidelines training sessions that were attended in total by approximately 175 participants, including circuit court judges, parole and probation agents, State's Attorneys, and Public Defenders. In January 2008, the MSCCSP staff presented an update on the sentencing guidelines and the work of the Commission to the Maryland State Bar Association (MSBA) Criminal Law & Practice Section. An educational session on the sentencing guidelines was provided for new appointees to the circuit bench at the New Trial Judges Orientation at the Mt. Washington Conference Center in November 2008. In addition, separate trainings were provided at the State's Attorney's Offices for Baltimore City, Frederick, Montgomery, and Prince George's Counties; in addition to the Public Defender's Office for Montgomery County and all of the counties in Circuit Seven (Calvert, Charles, Prince George's, and St. Mary's Counties).

Additionally, the Commission continued to deliver timely notice of guidelines relevant information in 2008 through the dissemination of the Guidelines E-News. The Guidelines E-News is a periodic report delivered electronically via e-mail to criminal justice practitioners in the state. The Guidelines E-News provides information on changes and/or additions to the guidelines and contains tips on guidelines worksheet submission. The Guidelines E-News also provides periodic reports on sentencing trends using data collected and maintained by the Commission. Anyone who is interested in receiving the Guidelines E-News may sign up to receive the newsletter by sending a request to: mccsp@crim.umd.edu.

Information and Data Requests

Each year the Commission staff responds to hundreds of questions regarding the guidelines via phone and e-mail inquiries. These questions are usually asked by those responsible for completing the guidelines worksheets (i.e., parole and probation agents, State's Attorneys, defense attorneys, and law clerks). Typical questions include asking for assistance in locating a specific offense and its respective seriousness category within the Guidelines Offense Table and clarification on the rules for calculating an offender's prior adult criminal record score. The Commission staff is available Monday through Friday from 8 am to 5 pm to respond to all guidelines related inquiries. Additionally, the Commission staff also routinely responds to requests for additional packets of the Maryland guidelines worksheet. Most requests in 2008 were submitted electronically via the Commission's website.

In an effort to promote increased visibility and aid public understanding of the sentencing process in Maryland, the MSCCSP is also available to respond to inquiries for information related to sentencing in the state's circuit courts. In 2008, the Commission responded to approximately 60 requests for data and/or specific information related to sentencing guidelines trends throughout the state. In response to a common inquiry, the MSCCSP completed a topical report entitled, "Maryland Sentencing Guidelines Compliance and Average Sentences for the Most Common Person, Drug, and Property Offenses." This report summarizes sentencing guidelines compliance and average sentence for the five most common offenses in each crime category (person, drug, and property) and is posted on the MSCCSP website.

The MSCCSP is also responsible for responding to the Legislature's request for information to produce fiscal estimate worksheets for sentencing related legislation while the General Assembly is in session. Requests for information are also fielded from a variety of individuals, including the Governor's Office, circuit judges, law clerks, prosecutors, defense attorneys,

parole and probation agents, victims and their family members, defendants and their family members, faculty/students of law and criminal justice, government agencies, media personnel, and other interested citizens. In these instances, the MSCCSP was able to provide a copy of the data contained within the sentencing guidelines database and/or produce special reports analyzing sentencing trends for specific offenses and/or specific time periods.

Data Collection, Oversight, and Verification

The MSCCSP staff is responsible for collection and maintenance of the Maryland sentencing guidelines database, which is compiled via data submitted on the Maryland sentencing guidelines worksheet. The Commission staff review and data enter all guidelines worksheets. In 2008, the staff spent considerable time checking and cleaning the data maintained within the Maryland sentencing guidelines database in an effort to maximize the accuracy of the data. These data verification activities typically involved (1) identifying cases in the database with characteristics likely to result in data entry error, (2) pulling and reviewing the filed worksheets for these cases, and (3) making corrections to the records in the database when necessary. Checking and cleaning the data on a regular basis throughout the year allowed for increased confidence in the accuracy of the data and permitted more reliable offense-specific analyses of the data. Much of this work was also necessary for the automated system and the simulation model currently in development. Data verification activities in 2008 included, but were not limited to, the following:

- Identifying cases with extreme values on one or more of the variables capturing sentence length. Making corrections to the database if the sentence length variables were entered incorrectly.
- Identifying cases with a mandatory minimum where the total sentence entered in the database was less than the mandatory minimum and/or the guidelines range entered was less than the mandatory minimum. Making corrections to the database if the sentence length, guidelines range, and/or offense variables were entered incorrectly.
- Identifying offenses that were similar and likely to be confused by data entry staff (e.g., DWI and DUI offenses, select firearms/weapons offenses). Checking cases involving similar offenses and making corrections to the database if the wrong offense was entered.
- Identifying cases with a sentence to home detention. Checking to ensure that all cases with this type of sentence were entered consistently and that home detention was included as part of the overall sentence time applicable to the guidelines.

- Identifying cases with sentence enhancements, such as the mandatory minimum enhancements and the doubling enhancement for subsequent offenders. Checking that the enhanced penalty was correctly recorded in the database.

Subcommittee Work

The MSCCSP currently has two standing Subcommittees to review specific aspects of the state's sentencing guidelines. The Subcommittee on Sentencing Guidelines, chaired by Dr. Charles Wellford, plays a critical role in reviewing proposals regarding changes to the guidelines. In 2008, the Guidelines Subcommittee met prior to each Commission meeting and was responsible for the initial review and consideration of the classification for new and amended offenses noted in Tables 1 and 2, as well as the reclassification of offenses noted in Tables 3 and 4.

Additionally, the Guidelines Subcommittee made recommendations to the full Commission regarding the adoption of formal language to: (a) revise the rule concerning the inclusion of PBJs when calculating the adult prior record section of the Offender Score; (b) revise instructions regarding scoring victim psychological injury when calculating the Offense Score for person offenses; and (c) add *conspiracy to 1st degree murder* to the Guidelines Offense Table to clarify the correct seriousness category. Finally, the Guidelines Subcommittee conducted an initial review of a proposal submitted by the Montgomery County State's Attorney's Office to revise the guidelines for theft and fraud related offenses involving large dollar amounts of loss to the victim.

The Commission's other standing subcommittee, the Subcommittee on Sentencing Drug Offenders, chaired by Delegate Curtis Anderson, was established in 2007 to review options available to the judiciary for sentencing Maryland's drug offender population. The Subcommittee on Sentencing Drug Offenders met three times in 2008 and began work to conduct a statewide inventory of the alternative corrections options, including drug courts and other treatment programs, available to the judiciary in each county. The goal of this project is to update a correctional options inventory completed by the MSCCSP in 2006 and to gain more detailed information on eligibility standards and target populations for specific programs.

Sentencing/Correctional Simulation Model

The MSCCSP continues to work to develop and utilize a sentencing/correctional simulation model. The Commission staff has worked closely with Applied Research Services, Inc. (ARS) to develop a computer simulation tool that mimics sentencing and correctional populations using different sentencing policies and laws, time-served practices, and sentence options/alternatives. The simulation model will be utilized to analyze the impact of proposed guidelines revisions on

the correctional population and will provide the ability to analyze the impact of changes in operating policies, sentencing practices, post-release practices, and external system pressures on the system.

In the past year, the MSCCSP has continued to work with ARS and the Department of Public Safety and Correctional Services (DPSCS) to build accurate time-served estimates. The Commission expects to begin utilization of the completed simulation model in 2009 and will work directly with staff from ARS to pilot the model during the upcoming Legislative Session.

Maryland Automated Guidelines System (MAGS)

The goal of the Commission is to fully automate sentencing guidelines calculation in a web-based application that will allow criminal justice practitioners to complete and submit guidelines worksheets electronically. The MSCCSP has been working closely with programmers to develop the Maryland Automated Guidelines System (MAGS). MAGS will calculate scores automatically and present the appropriate sentencing guidelines range for each case. The automated system will also allow users to run multiple sentencing scenarios where they will be able to determine the appropriate guidelines range under varying sentencing conditions. The automated system will allow a user to print a hard copy of the computed guidelines for each case and send completed forms to the Commission electronically. MAGS will be available through the Commission's website to all judges, prosecutors, public defenders, defense attorneys, and probation and parole officers who register with the Commission and receive a secure user login and password.

There are many benefits to the automation of the sentencing guidelines worksheet completion and submission process. First, a review of the guidelines calculation process has illustrated that guidelines calculation errors do occur. The MSCCSP believes automation will help reduce a significant proportion of the errors that are common when the guidelines are manually calculated. These errors include mathematical miscalculation, selection of an incorrect seriousness category, and improper selection of the appropriate cell within the sentencing matrix. In addition, the utilization of MAGS will ultimately reduce the amount of time that the Commission staff spends on data entry of the guidelines worksheets. Consequently, automation will lead to more timely and accurate assessment of sentencing policy and practice in Maryland.

In 2008, the MSCCSP staff continued to work with the Information Technology and Communications Division of the DPSCS to plan the implementation of the second phase of the program which will allow for automatic retrieval of prior criminal history information through the Maryland Criminal Justice Information System (CJIS). The relationship with DPSCS is also expected to help expand the capacity of the MAGS program to ensure the program will be operational on a statewide basis.

Public Comments Hearing

The MSCCSP held its annual public comments hearing at the House Office Building in Annapolis on September 23, 2008. The public comments hearing provides an opportunity for any interested person to address the Commission and discuss sentencing related issues. The Commission sent an invitation to various key stakeholders throughout the state and announced the meeting via the Commission's website, the Maryland Register, the Maryland General Assembly's hearing schedule, and a press release by the DPSCS. At the 2008 Public Comments Hearing, the Commission heard testimony from a representative of the Montgomery County State's Attorney's Office.

SENTENCES REPORTED IN FY 2008

Maryland's voluntary sentencing guidelines apply to criminal cases prosecuted in circuit court, with the exception of the following sentencing matters: prayers for a jury trial from the district court, unless a pre-sentence investigation (PSI) is ordered; appeals from the district court, unless a PSI is ordered; crimes that carry no possible penalty of incarceration; first degree murder convictions if the death penalty is sought under CR, §2-303; and violations of public laws and municipal ordinances. The MSCCSP has been charged with the responsibility of collecting sentencing guidelines worksheets and automating the information in order to monitor sentencing practice and adopt changes to the sentencing guidelines matrices. The Administrative Office of the Courts (AOC) compiled this data between July 1983 and June 2000. Beginning in July 2000, the MSCCSP assumed the responsibility of compiling this data from worksheets. Since that time, the MSCCSP has continued to update the data and check for errors. In the process, corrections have been made to the database and additional worksheets have been located and incorporated which may affect the overall totals reported in previous reports.

Worksheets Received

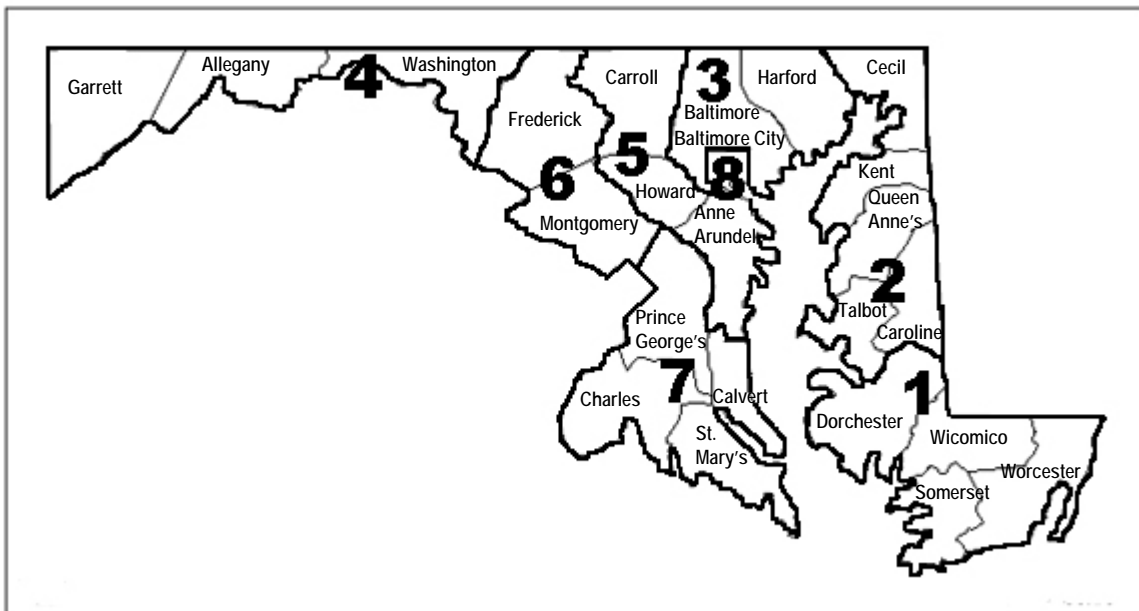
The annual report of the MSCCSP in 2007 examined data collected in calendar year 2006. A decision was made to analyze data from calendar year 2006 rather than fiscal year 2007 because data for the calendar year were more complete at the writing of the report. In 2008, the MSCCSP was fortunate to secure additional interns from the University of Maryland, allowing for more timely data entry of sentencing guidelines worksheets. As a result, the current report summarizes data from fiscal year 2008, rather than calendar year 2007.

In fiscal year 2008, the MSCCSP received 11,658 worksheets. Table 5 provides a breakdown of the number and percentage of worksheets received in fiscal year 2008 by circuit. The jurisdictions in each circuit are shown in Figure 1. The largest number of guidelines worksheets (3,979) was received from the Eighth Circuit (Baltimore City), while the smallest number (416) was received from the Second Circuit (Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties).

Table 5. Number and Percentage of Worksheets Submitted by Circuit, Fiscal Year 2008

Circuit	Number of Worksheets Submitted	Percent of Total Worksheets Submitted
1	775	6.6%
2	416	3.6%
3	1,549	13.3%
4	580	5.0%
5	1,392	11.9%
6	665	5.7%
7	2,302	19.7%
8	3,979	34.1%
TOTAL	11,658	100.0%

Figure 1. Maryland Judicial Circuits



Case Characteristics

Figures 2 through 4 summarize the descriptive characteristics from the 11,658 worksheets submitted for offenders sentenced in fiscal year 2008. Most were male (88.2%) and African-American (71.3%). The median age of offenders at date of sentencing was 27 years. The youngest offender was 15, while the oldest was 84 years of age. Approximately 20% of offenders were under 21 years of age; 41% were 21-30 years old; 20% were 31-40 years old; and the remaining 19% were 41 years or older.

Figure 2. Distribution of Cases by Gender of Offender, Fiscal Year 2008

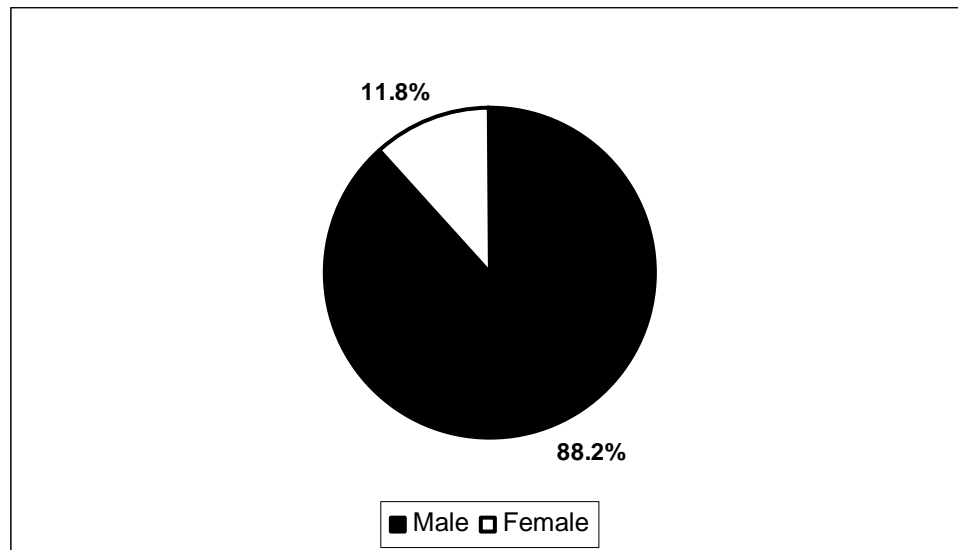


Figure 3. Distribution of Cases by Race of Offender, Fiscal Year 2008

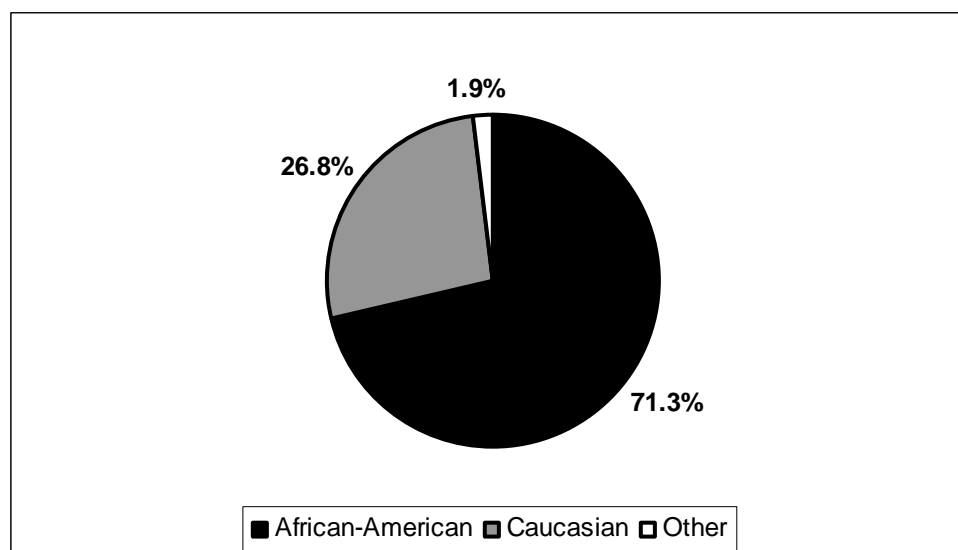
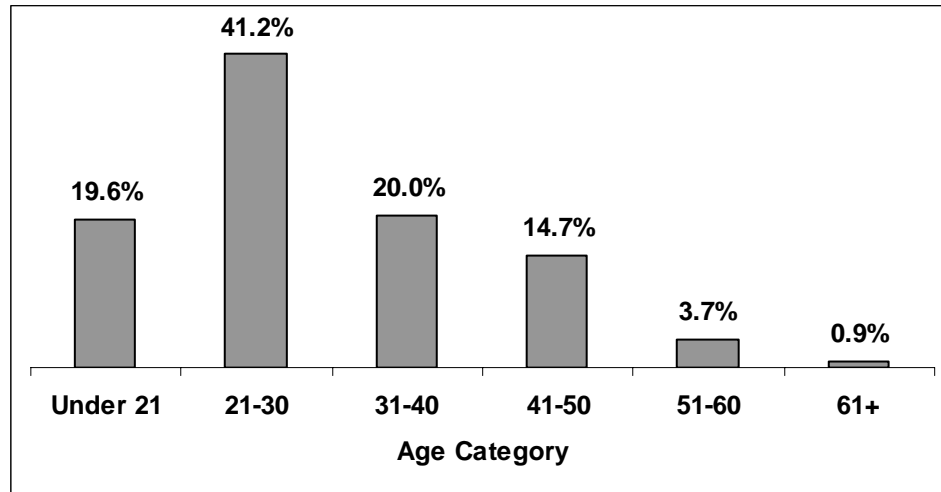
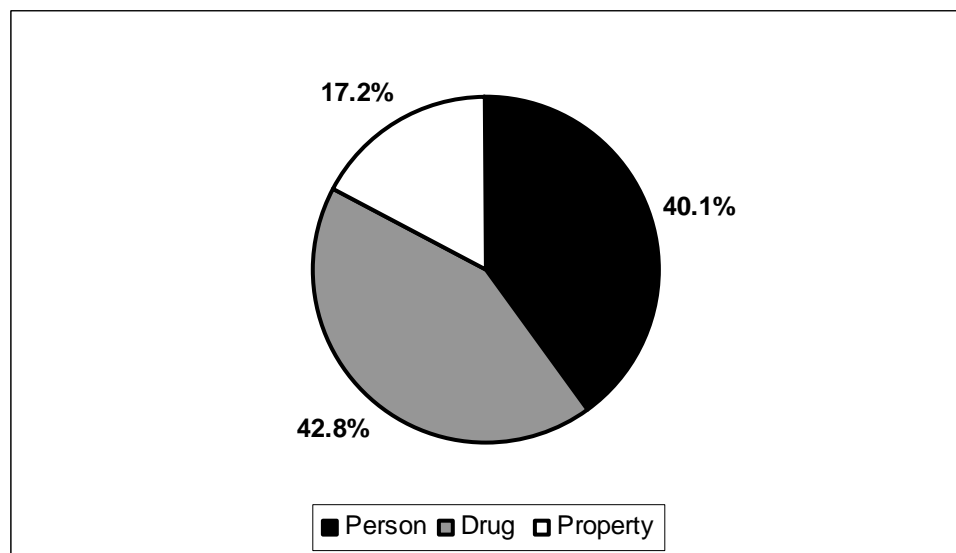


Figure 4. Distribution of Cases by Age of Offender, Fiscal Year 2008

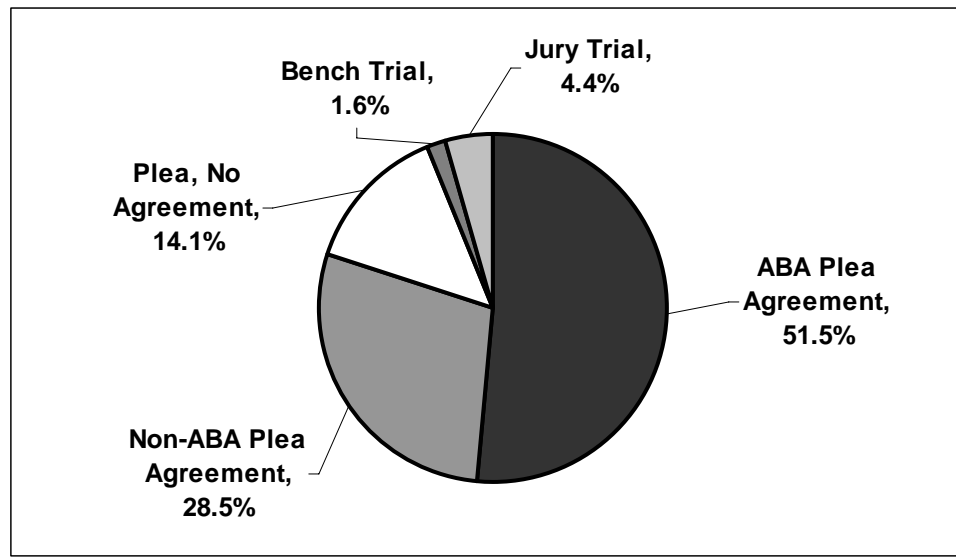
Figures 5 through 7 show the distribution of cases by crime category, disposition type, and sentence type. Note that the total number of cases on which the figures are based excludes reconsideration/review (N=15) and probation revocation cases (N=64). Figure 5 provides a breakdown of cases by crime category. For cases involving multiple offenses, only the most serious offense was considered. Drug cases were most common (42.8%), followed closely by cases involving an offense against a person (40.1%). In approximately 17% of cases, the most serious offense was a property crime. The distribution of cases by crime category was similar when the analysis was limited to defendants sentenced to incarceration (40.5% drug, 42.8% person, 16.6% property).¹

Figure 5. Distribution of Cases by Crime Category, Fiscal Year 2008

¹ Incarceration includes home detention and credited time, as well as post-sentence jail/prison time.

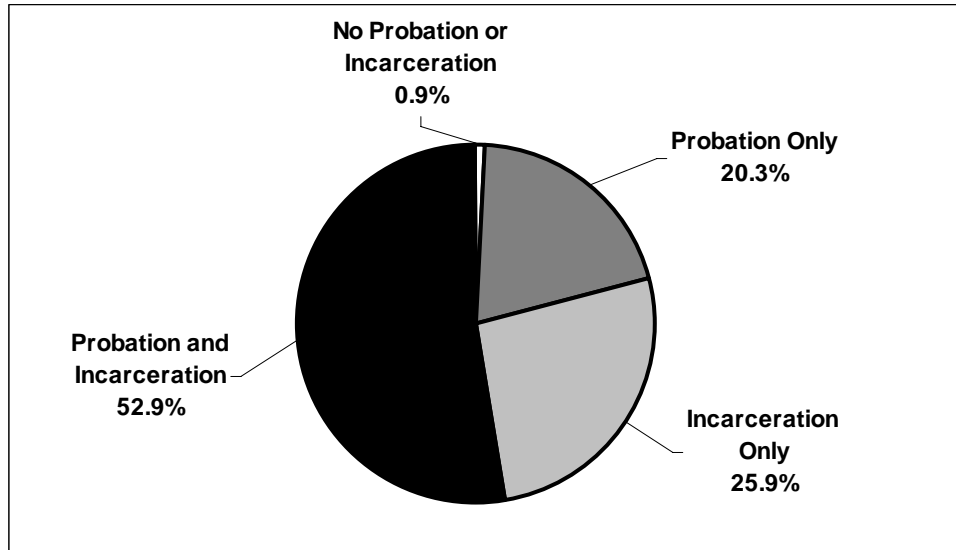
Figure 6 summarizes the distribution of cases by disposition type (Appendix C contains a description of the eight major disposition types listed on the sentencing guidelines worksheet). The vast majority of cases were resolved by either an ABA plea agreement (51.5%) or a non-ABA plea agreement (28.5%). An additional 14.1% were resolved by a plea with no agreement, and 6% of cases were resolved by either a bench or jury trial (1.6% and 4.4%, respectively).

Figure 6. Distribution of Cases by Disposition, Fiscal Year 2008



The distribution of cases by sentence type is displayed in Figure 7. More than half of all cases resulted in a sentence to both incarceration and probation. Just over one-fourth of offenders were sentenced to incarceration only, and 20% were sentenced to probation only. Few defendants (<1%) received a sentence that did not include either incarceration or probation.

Figure 7. Distribution of Cases by Sentence Type, Fiscal Year 2008



JUDICIAL COMPLIANCE WITH MARYLAND'S VOLUNTARY SENTENCING GUIDELINES

The MSCCSP is mandated to examine judicial compliance based on data extracted from the sentencing guidelines worksheets submitted after each defendant is sentenced in circuit court. The following provides a detailed examination of judicial compliance with Maryland's voluntary sentencing guidelines.

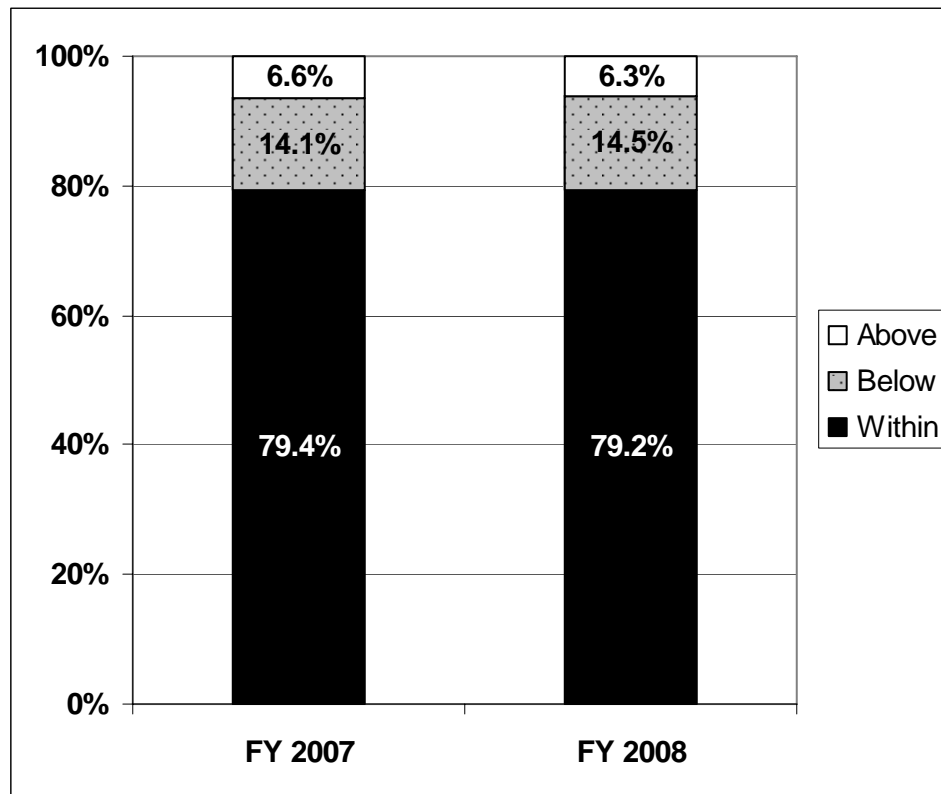
Judicial Compliance Rates Overall

A sentence is deemed compliant with the guidelines if the initial sentence (defined as the sum of incarceration, credited time, and home detention) falls within the applicable guidelines range. In addition, as of July 2001, all sentences pursuant to an American Bar Association (ABA) plea agreement are considered compliant (COMAR 14.22.01.17), as they represent an accurate reflection of the consensus of the parties and the court within the specific community they represent. Similarly, sentences to correctional options programs (e.g., substance abuse treatment, home detention) are deemed compliant provided that the initial sentence plus any suspended sentence falls within or above the applicable guidelines range and the case does not include a crime of violence, sexual child abuse, or escape.

Figure 8 contains a breakdown of the overall guidelines compliance rates for fiscal years 2007 and 2008. The figure indicates that in both years, the overall rate of compliance exceeded the Commission's goal of 65% compliance.² The aggregate compliance rate remained relatively unchanged from one year to the next, with 79% of all cases sentenced within the guidelines.

² When the guidelines were originally drafted by the Judicial Committee on Sentencing in 1979, the Committee set an expectation that two-thirds of sentences would fall within the recommended sentencing range and when sentencing practice resulted in departures from the recommended range in more than one-third of the cases, the guidelines would be revised. Since that time, the Commission has adopted the goal of 65% as the benchmark standard for compliance.

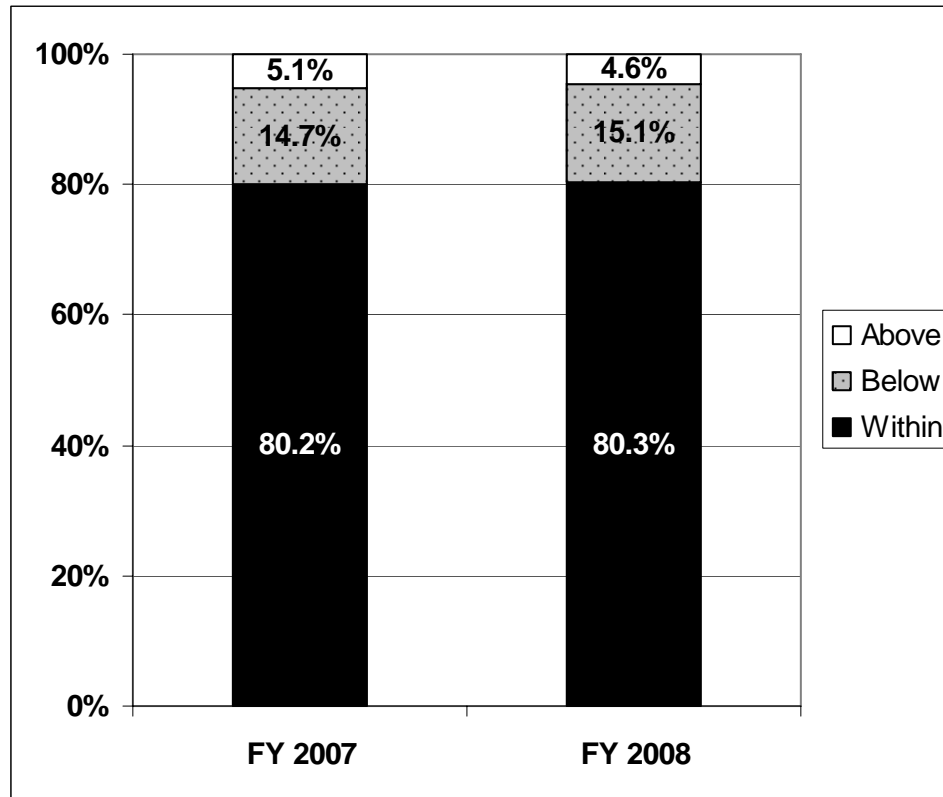
**Figure 8. Overall Sentencing Guidelines Compliance by Fiscal Year
(All Cases)**



Analyses of judicial compliance in Maryland have traditionally focused on sentences for single count convictions because they permit the most direct comparison of compliance by crime category and by offense type, within the applicable cell of the sentencing matrix. Since multiple count convictions can consist of any combination of person, drug, and property offenses, meaningful interpretations of sentencing patterns within matrices cannot be obtained. Thus, the figures from this point forward focus on sentences for single count convictions during fiscal years 2007 and 2008. Of the 11,658 sentencing guidelines worksheets submitted to the MSCCSP in 2008, 8,884 (76%) contained single count convictions.

Figure 9 provides a breakdown of the overall guidelines compliance rates for fiscal years 2007 and 2008 based on single count convictions. The rates are similar to those above. In both years, the overall rate of compliance exceeded the Commission's goal of 65% compliance. Approximately 80% of all cases were sentenced within the recommended guidelines range. When departures occurred, they were more often below the guidelines rather than above.

**Figure 9. Overall Sentencing Guidelines Compliance by Fiscal Year
(Single Count Convictions)**

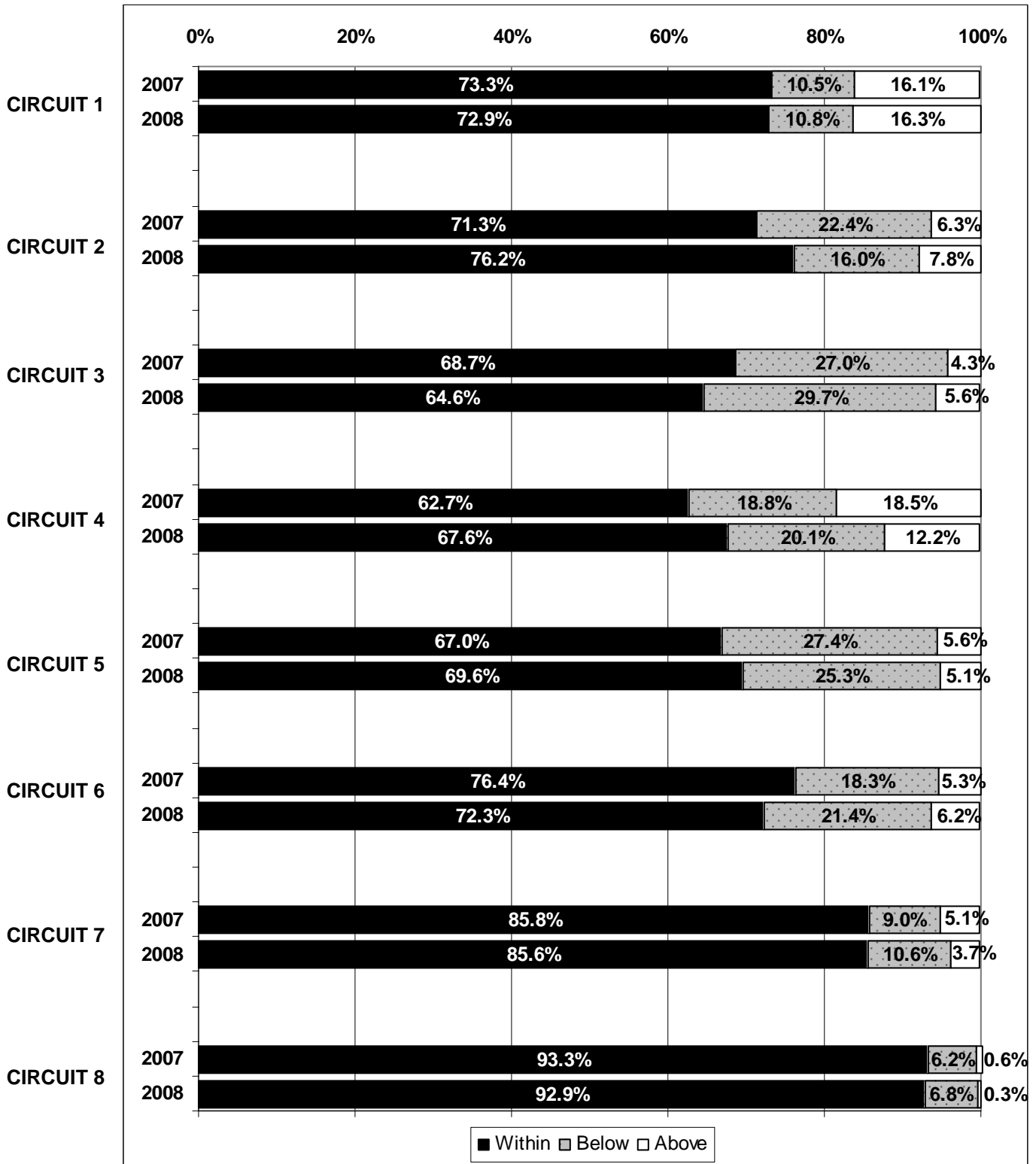


Judicial Compliance Rates by Circuit

As shown in Figure 10, all eight circuits met the 65% compliance benchmark in fiscal year 2008.³ The Third Circuit fell just short of the benchmark with a compliance rate of 64.6%. The circuit with the largest number of defendants, the Eighth Circuit, had the highest compliance rate (92.9%). The Fifth Circuit experienced a small increase in compliance (2.6%), while the Second and Fourth Circuits experienced an increase of nearly 5%. In contrast, compliance decreased by 4.1% in the Third and Sixth Circuits. Compliance rates remained relatively unchanged in the First, Seventh, and Eighth Circuits.

³ Compliance rates were rounded to the nearest whole number to determine whether the 65% benchmark was met.

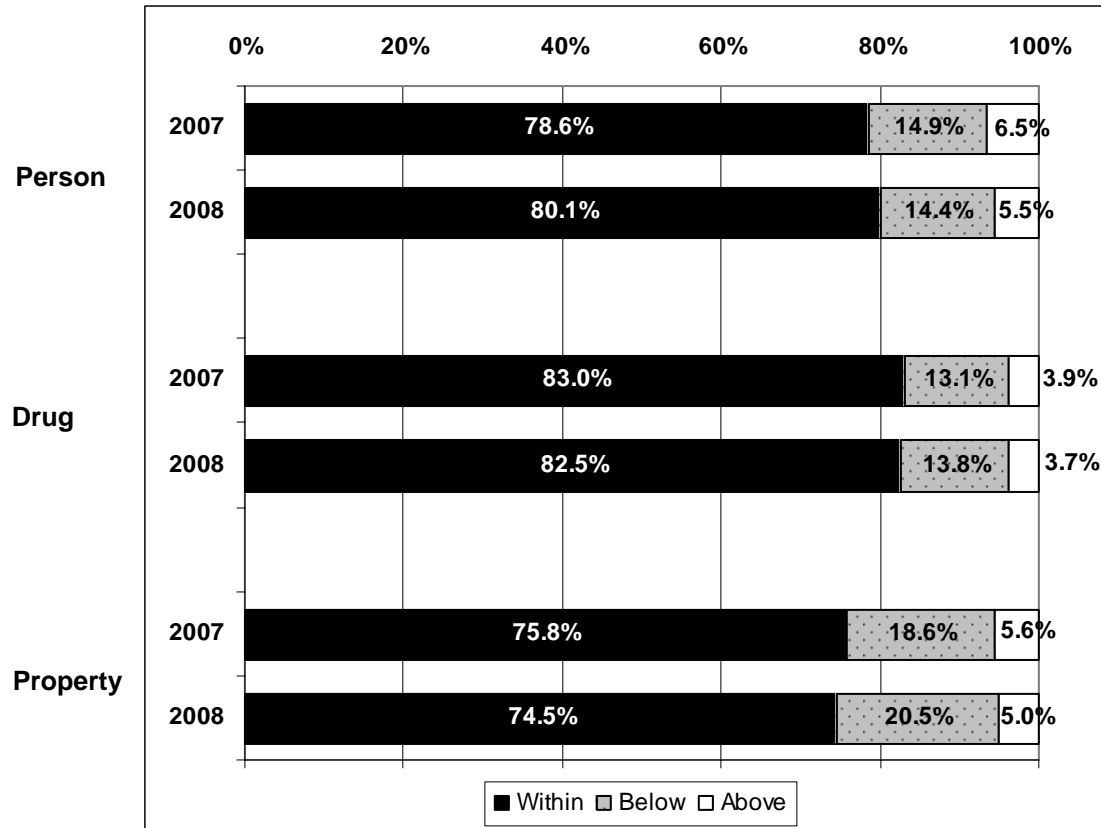
Figure 10. Sentencing Guidelines Compliance by Circuit and Fiscal Year



Judicial Compliance Rates by Crime Category

Figure 11 shows judicial compliance by crime category for fiscal years 2007 and 2008. In both years, drug offenses were the least likely to result in a departure from the guidelines. The compliance rates for all three crime categories changed little from 2007 to 2008, and the 65% benchmark was met for all three crime categories in both fiscal years.⁴

Figure 11. Sentencing Guidelines Compliance by Crime Category and Fiscal Year

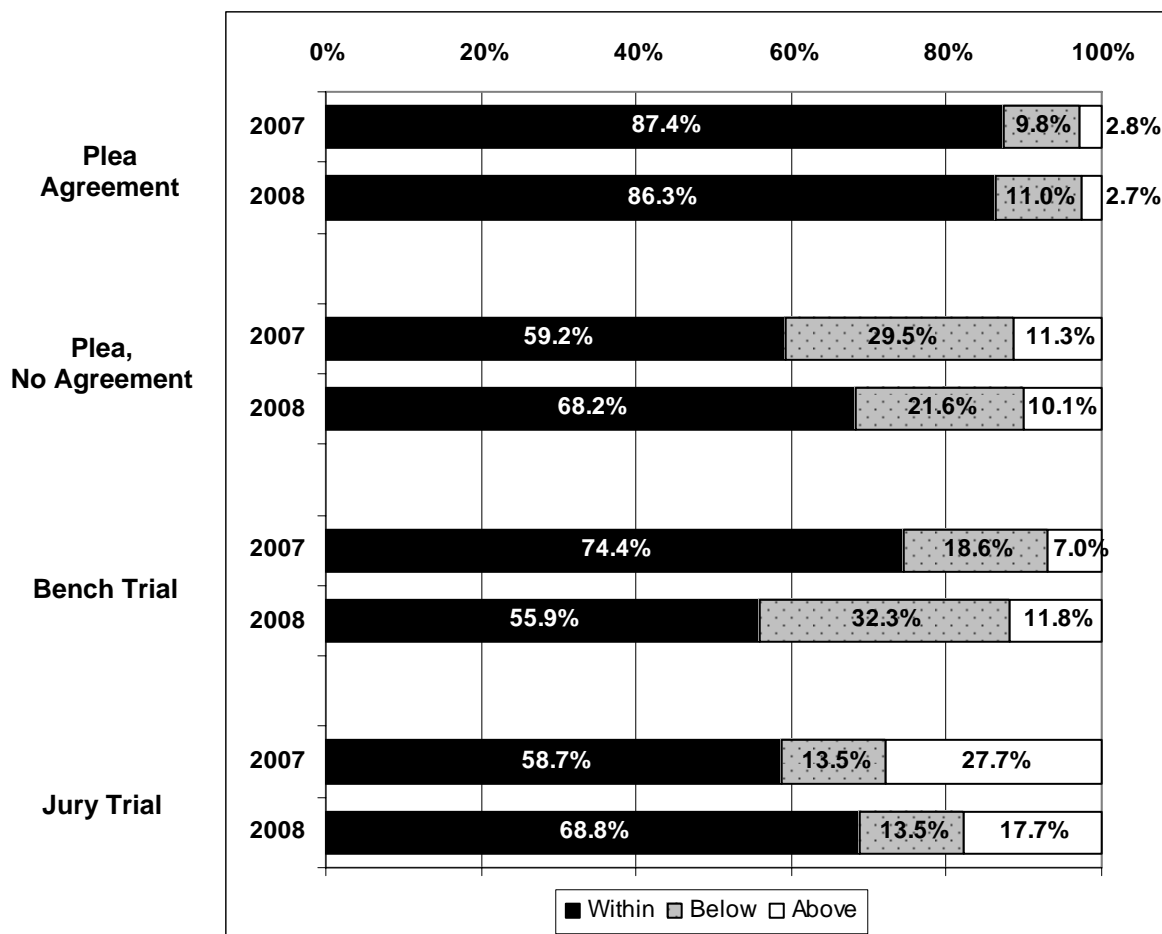


⁴ See Appendix D for sentencing guidelines compliance rates for the five most common offenses in each crime category.

Judicial Compliance Rates by Type of Disposition

Figure 12 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). Over the past two fiscal years, compliance rates remained more or less unchanged for cases disposed by a plea agreement. The compliance rate for cases adjudicated by a plea with no agreement increased from 59.2% in 2007 to 68.2% in 2008. Similarly, the compliance rate for cases resolved by a jury trial jumped from 58.7% to 68.8%. In contrast, the rate of guidelines compliance declined substantially for cases disposed of by a bench trial, falling short of the 65% compliance benchmark. Departures occurred 44.1% of the time among cases resolved by a bench trial, and downward departures were more common than upward departures. Plea agreements accounted for the highest percentage of compliant cases (86.3%) among the four types of disposition noted in Figure 12. This is not surprising given that the plea agreement category includes ABA pleas, which as of July 2001, are defined as compliant.

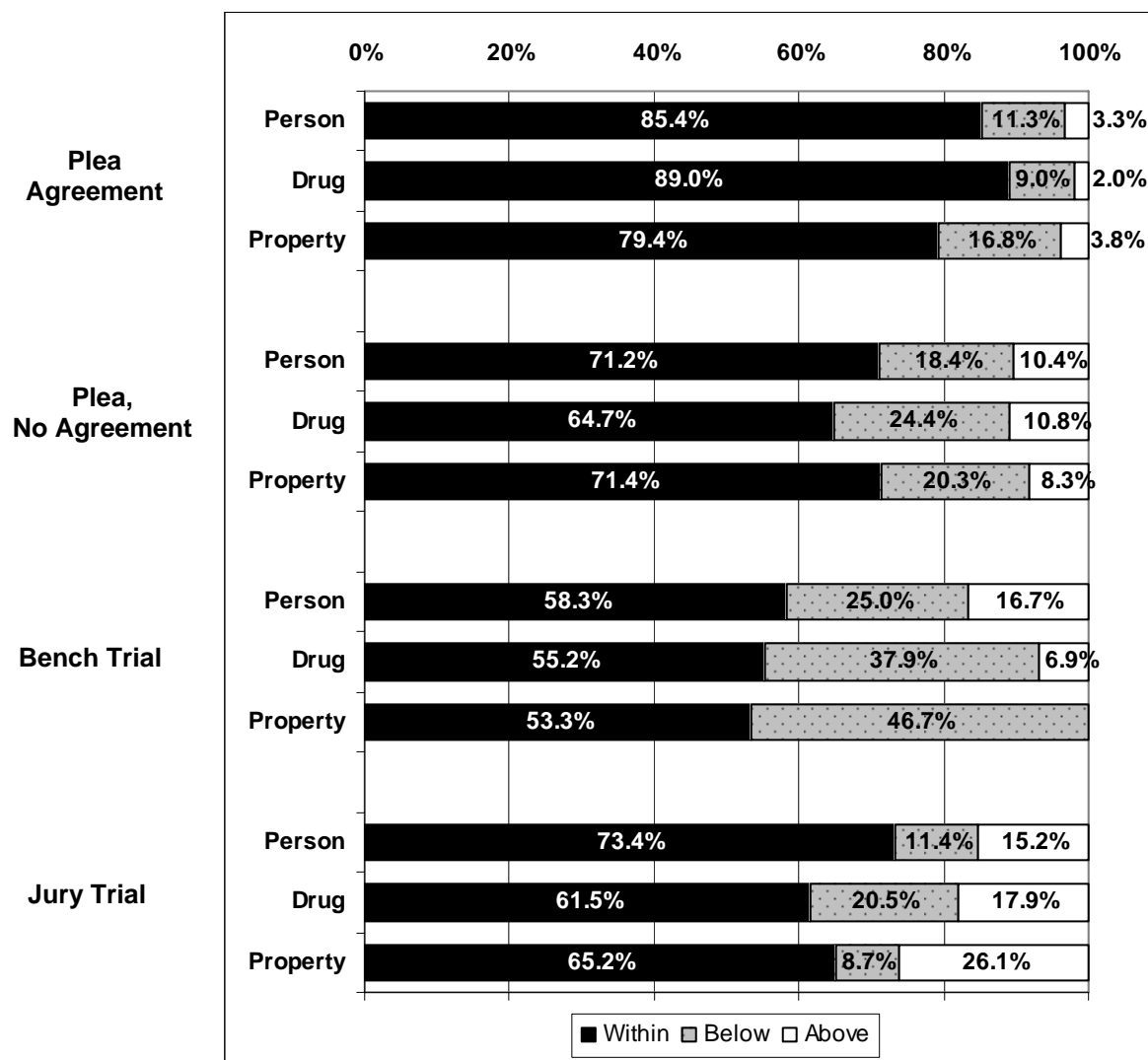
Figure 12. Sentencing Guidelines Compliance by Type of Disposition and Fiscal Year



Judicial Compliance Rates by Crime Category and Disposition

Compliance rates by crime category and disposition are displayed in Figure 13 for fiscal year 2008 and in Figure 14 for fiscal year 2007. It is important to keep in mind that some of the rates are based on a very small number of cases. For example, the MSCCSP received only 15 worksheets in fiscal year 2008 for single-count property offenses adjudicated by a bench trial.

Figure 13. Sentencing Guidelines Compliance by Crime Category and Disposition, 2008

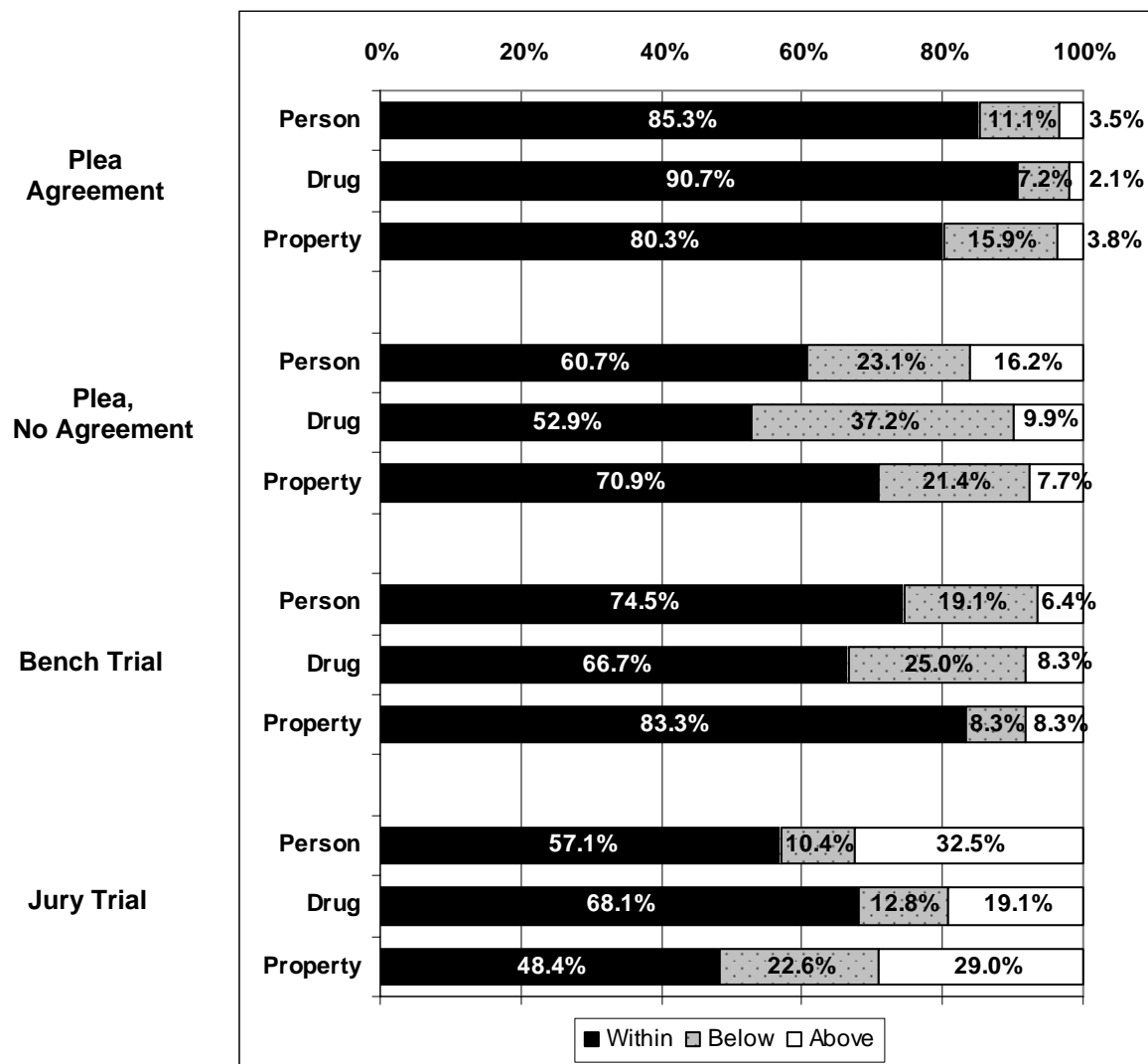


Looking first at the findings for 2008, the highest compliance rates were observed for person, drug, and property offenses adjudicated by a plea agreement (85.4%, 89%, and 79.4%, respectively). The other compliance rates to meet the benchmark of 65% were those for person offenses resolved by either a plea with no agreement (71.2%) or by a jury trial (73.4%), drug offenses adjudicated via plea no agreement (64.7%), and property offenses adjudicated by either a plea with no agreement (71.4%) or by a jury trial (65.2%). Property offenses resolved

by a bench trial had the lowest compliance rate (53.3%), and all departures in this category were downward departures. In comparison, upward departures were most frequent for property offenses adjudicated by a jury trial (26.1%).

Figure 14 shows that the highest compliance rates for fiscal year 2007 were observed for person, drug, and property offenses adjudicated by a plea agreement (85.3%, 90.7%, and 80.3%, respectively) and for property offenses resolved by a bench trial (83.3%). The other compliance rates to meet the benchmark of 65% were those for property offenses adjudicated by a plea with no agreement (70.9%), person offenses adjudicated by a bench trial (74.5%), and drug offenses adjudicated by a bench (66.7%) or jury (68.1%) trial. Property offenses resolved by a jury trial had the lowest compliance rate (48.4%). Downward departures were most common among drug offenses adjudicated by a plea with no agreement (37.2%), while upward departures were most common among person offenses resolved by a jury trial (32.5%).

Figure 14. Sentencing Guidelines Compliance by Crime Category and Disposition, 2007



A comparison of Figures 13 and 14 indicates that the compliance rate dropped from above the 65% benchmark in fiscal year 2007 to below the 65% benchmark in fiscal year 2008 for person, drug, and property offenses adjudicated by a bench trial and drug offenses resolved by a jury trial. Conversely, compliance rose from below the 65% benchmark in 2007 to above the 65% benchmark in 2008 for person and drug offenses adjudicated by a plea with no agreement, as well as person and property offenses resolved by a jury trial.

Departure Reasons

COMAR regulation 14.22.01.05(A) directs the sentencing judge to document the reason or reasons for imposing a sentence outside of the recommended guidelines range on the guidelines worksheet. In order to facilitate the reporting of mitigating and aggravating departure reasons on the sentencing guidelines worksheet, the MSCCSP provides judges with a reference card which lists some of the more common departure reasons and includes a numerical departure code for each (Appendix E contains a list of these departure reasons). The worksheet allows for up to three departure codes to be reported and also provides a space for the judge to write in other reasons not contained on the reference card.

Tables 6 and 7 display the reasons given for departures from the guidelines in fiscal year 2008. The tables include all of the reasons listed on the reference card as well as the most commonly cited "other" reasons. Table 6 provides a rank order of the mitigating reasons judges provided for cases where the sentence resulted in a downward departure. The first row of the table shows that in 60.6% of downward departures, the reason(s) for departure was not provided. The most commonly cited reasons for downward departures were: 1) recommendation of the State's Attorney or Division of Parole and Probation; 2) the parties reached a plea agreement that called for a reduced sentence; and 3) offender's commitment to substance abuse treatment or other therapeutic program.

Table 6. Departure Reasons for Cases Below the Guidelines, Fiscal Year 2008^a

Mitigating Reasons	Percent of Departures Where Reason is Cited	Valid Percent^b
<i>No Departure Reason Given</i>	60.6%	---
Recommendation of State's Attorney or Division of Parole and Probation	17.4%	44.2%
The parties reached a plea agreement that called for a reduced sentence	17.1%	43.2%
Offender's commitment to substance abuse treatment or other therapeutic program	5.4%	13.7%
Offender's minor role in the offense	2.3%	5.9%
Victim's participation in the offense lessens the offender's culpability	1.6%	4%
Offender made restorative efforts after the offense	1.4%	3.4%
Offender had diminished capability for judgment	1.4%	3.4%
Offender's prior criminal record not significant	1.1%	2.7%
Offender's age/health	1%	2.5%
Weak facts of the case	0.5%	1.3%
Offender was influenced by coercion or duress	0.4%	1%
Request of victim	0.4%	1%
Other reason (not specified above)	5%	12.8%

^a Multiple reasons may be cited in each case.

^b Valid percent is based on the number of cases below the guidelines where a reason is cited.

Table 7 provides a rank order of the aggravating reasons judges provided for cases where the sentence resulted in an upward departure. Here again, the first row of the table shows that in 57.3% of departures, the reason(s) for departure was not provided. The most commonly cited reasons for departures above the guidelines were: 1) recommendation of the State's Attorney or Division of Parole and Probation; 2) offender's major role in the offense; and 3) the level of harm was excessive.

Table 7. Departure Reasons for Cases Above the Guidelines, Fiscal Year 2008^a

Aggravating Reasons	Percent of Departures Where Reason is Cited	Valid Percent^b
<i>No Departure Reason Given</i>	57.3%	---
Recommendation of State's Attorney or Division of Parole and Probation	18.3%	42.8%
Offender's major role in the offense	6.7%	15.6%
The level of harm was excessive	5.9%	13.9%
Offender's significant participation in major controlled substance offense	5.2%	12.1%
Offender's prior criminal record significant	4.7%	11%
The vicious or heinous nature of the conduct	4.2%	9.8%
Offender exploited a position of trust	4%	9.2%
Special circumstances of the victim	2.7%	6.4%
Offender committed a "white collar" offense	2.2%	5.2%
Other reason (not specified above)	10.9%	25.4%

^a Multiple reasons may be cited in each case.

^b Valid percent is based on the number of cases above the guidelines where a reason is cited.

ADDITIONAL INFORMATION COLLECTED IN RESPONSE TO LEGISLATIVE MANDATES

In 2002, the Maryland General Assembly passed House Bill 1143, requiring that the annual report of the MSCCSP “review reductions or increases in original sentences that have occurred because of reconsiderations of sentences imposed under §14-101 of the Criminal Law Article” and “categorize information on the number of reconsiderations of sentences by crimes as listed in §14-101 of the Criminal Law Article and by judicial circuit.” In response to this mandate, the MSCCSP revised the sentencing guidelines worksheet to capture information on reconsidered sentences, adopted effective July 1, 2001.

More recently in 2004, the Maryland General Assembly passed House Bill 918, mandating the MSCCSP to include an entry location on the sentencing guidelines worksheet to allow for the reporting of the specific dollar amount, when available, of the economic loss to the victim for crimes involving theft and related crimes under Title 7 of the Criminal Law Article and fraud and related crimes under Title 8 of the Criminal Law Article. In response, the MSCCSP revised the sentencing guidelines worksheet to capture the amount of economic loss to the victim in theft and fraud related cases, adopted effective March 28, 2005.⁵

Since the MSCCSP began collecting information on reconsidered cases in fiscal year 2002, worksheets for these cases have been underreported to the MSCCSP, preventing a complete analysis of their impact. Similarly, in the vast majority of cases with a conviction for a Title 7 or Title 8 offense, the amount of economic loss to the victim has been left blank on the worksheet. It is the belief of the MSCCSP that the initiation of the automated sentencing guidelines system will facilitate the state circuit courts in submitting this information. The available data on reconsidered sentences and economic loss for cases sentenced in fiscal year 2008 are summarized below.

Report on Adjustments from Reconsidered Sentences

Although HB 1143 (2002) specifically calls for the review of reconsidered sentences for “crimes of violence” as defined in §14-101 of the Criminal Law Article, Annotated Code of Maryland, Table 8 reports the submissions of all reconsidered sentences reported to the MSCCSP for fiscal year 2008 by circuit. The table is based on reconsidered sentences for thirteen offenders

⁵ The MSCCSP adopted the following definition of economic loss: the amount of restitution ordered by a circuit court judge or, if not ordered, the full amount of restitution that could have been ordered (COMAR 14.22.01.02.B(6-1)).

and twenty offenses. Robbery with a dangerous weapon [CR, §3-403] was the most common offense in reconsidered cases reported to the MSCCSP in fiscal year 2008.

Table 8. Case Reconsiderations, Fiscal Year 2008^a

Circuit	Offense	# of Cases
FIRST	CDS Possession (Marijuana)	1
SEVENTH	Handgun Use in Felony or Crime of Violence	2
	Wear, Carry, Transport Handgun on School Property	1
	Murder, 1 st Degree	1
	Murder, 1 st Degree, Attempted	1
	Murder, 2 nd Degree	4
	Carjacking, Unarmed	1
	Robbery with Dangerous Weapon	6
	Distribution Cocaine	1
	Possession Marijuana	1
	Felony Theft or Theft Scheme, \$500 or Greater	1

^a Table 8 is based on reconsidered sentences for 13 offenders and 20 offenses.

Economic Loss in Title 7 and Title 8 Crimes

In fiscal year 2008, 1,409 sentences for theft, fraud, and related crimes were reported to the MSCCSP. The amount of economic loss to the victim was recorded for only 312 (22.1%) of these cases.⁶ When reported, economic loss ranged in value from a minimum of no loss to a maximum of \$560,642. The average amount of loss was \$16,885. The majority of cases in which the amount of economic loss was reported on the sentencing guidelines worksheet involved a conviction for either misdemeanor theft or theft scheme, less than \$500 [CR, §7-104(g)(2)] or felony theft or theft scheme, \$500 or greater [CR, §7-104(g)(1)].

⁶ While the percentage of applicable cases where the amount of economic loss was reported did increase in fiscal year 2008, it is still considerably underreported. The planned automation of the sentencing guidelines calculation and submission process in 2009 is expected to substantially improve this reporting process by including a required field that will prompt the user for economic loss information for all theft and fraud related convictions.

MSCCSP PLANNED ACTIVITIES FOR 2009

The work of the MSCCSP in 2009 will largely be driven by pressing policy issues and concerns that develop throughout the course of the year. However, the MSCCSP has identified several activities that will be addressed in 2009.

The MSCCSP will work to update the Maryland Sentencing Guidelines Manual (MSGM) to incorporate modifications to the guidelines approved by the Commission at the end of 2008. The MSGM will be revised to reflect the update in instructions for scoring the victim psychological injury component of the Offense Score, adopted at the December 9, 2008 meeting.

The Commission will also work to continue to review the sentencing guidelines for theft and fraud cases involving large dollar amounts. The MSCCSP will collaborate with programmers developing MAGS to create an easier method for obtaining data on dollar amount in theft and fraud related convictions. Additionally, the MSCCSP will work with the Attorney General's Office to obtain data for cases prosecuted by their office.

The Commission's Guidelines Subcommittee will continue to perform routine duties such as reviewing all criminal offenses and changes in the criminal code passed by the General Assembly during the upcoming legislative session, classifying the seriousness categories for these offenses, and submitting amendments to the AELR Committee for adoption in the COMAR. The Guidelines Subcommittee will also work with the MAGS programmers to develop a protocol for electronic submission of the sentencing guidelines worksheets. The Subcommittee on Sentencing Drug Offenders will work to complete an inventory on correctional alternatives available for drug offenders and offer recommendations for addressing sentencing options for the drug offender population in Maryland.

In 2009, the MSCCSP will continue to provide training on the application of the guidelines and will work with the judiciary to maintain a sentencing guidelines education program for all new appointees to the circuit court bench. Furthermore, the Commission will provide orientation and training for utilization of the automated sentencing guidelines system once it is fully implemented. The MSCCSP will collaborate with the Information Technology and Communications Division of DPSCS to expand the capacity of the automated system by

implementing a system for automatic retrieval of criminal history information through the Maryland CJIS.

During the next year, the MSCCSP will continue to work closely with ARS to begin utilization of the sentencing/correctional simulation model to help determine the impact on the correctional population for any proposed changes to the guidelines. ARS will provide on-site training for the MSCCSP staff and will review projections with DPSCS staff to ensure accurate model specifications. Additionally, ARS will work with the MSCCSP staff during the 2009 Legislative Session to pilot the model by producing fiscal impact statements for legislation that considers modifications to penalty provisions or sentencing practice.

In August 2009, the MSCCSP will host the 15th annual conference of the National Association of Sentencing Commissions (NASC). NASC was created in the 1990s to facilitate the exchange and sharing of information, ideas, data, expertise, and experiences and to educate on issues related to sentencing policies, sentencing guidelines and sentencing commissions. Currently, the NASC membership includes representation from 23 formally-established sentencing commissions, each unique in its sentencing system and objectives. In addition, there are several other states that are considering the creation of a sentencing commission or related policy board. Every year, the NASC conference brings together judges, legislators, correctional officials, policy makers, academics, researchers, and practitioners from around the country to examine our nation's experiences with sentencing laws and practices and to discuss emerging issues and innovations. The conference will be held August 2-4 at the Renaissance Harborplace Hotel in Baltimore, providing an opportunity for Maryland's criminal justice community to share with and learn from a prominent group of national sentencing policy experts.

The activities described above are just a few of the many steps that will be taken by the Commission in 2009 to support the consistent, fair, and proportional application of sentencing practice in Maryland.

APPENDICES

Appendix A:

Sentencing Guidelines Matrices

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

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

Sentencing Matrix for Drug Offenses (Revised 10/2001)								
Offender Score								
Offense Seriousness Category	0	1	2	3	4	5	6	7 or more
VII	P	P	P	P-1M	P-3M	P-6M	3M-6M	6M-2Y
VI	Available for future use. There are currently no seriousness category VI drug offenses.							
V	P-6M	P-12M	3M-12M	6M-18M	1Y-2Y	1.5Y-2.5Y	2Y-3Y	3Y-4Y
IV	P-12M	P-18M	6M-18M	1Y-2Y	1.5Y-2.5Y	2Y-3Y	3Y-4Y	3.5Y-10Y
III-A Marijuana import 45 kilograms or more, and MDMA over 750 grams	P-18M	P-2Y	6M-2Y	1Y-4Y	2Y-6Y	3Y-8Y	4Y-12Y	10Y-20Y
III-B Non-marijuana and non-MDMA, Except Import	6M-3Y	1Y-3Y	18M-4Y	3Y-7Y	4Y-8Y	5Y-10Y	7Y-14Y	12Y-20Y
III-C Non-marijuana and non-MDMA, Import	1Y-4Y	2Y-5Y	3Y-6Y	4Y-7Y	5Y-8Y	6Y-10Y	8Y-15Y	15Y-25Y
II	20Y-24Y	22Y-26Y	24Y-28Y	26Y-30Y	28Y-32Y	30Y-36Y	32Y-37Y	35Y-40Y

P=Probation, M=Months, Y=Years

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

P=Probation, M=Months, Y=Years

Appendix B:

Maryland Sentencing Guidelines Worksheet (version 1.4)

MARYLAND SENTENCING GUIDELINES WORKSHEET				OFFENDER NAME - Last, First, Middle		SID#		SEX M ___ F ___		BIRTHDATE		JURISDICTION			
PSI		DATE OF OFFENSE		DATE OF SENTENCING		DISPOSITION TYPE		REPRESENTATION		ETHNICITY		RACE			
AT THIS SENTENCING, NUMBER OF:		CONVICTED OFFENSES		CRIMINAL EVENTS		ABA plea agreement ___ Non-ABA plea agreement ___ Plea, no agreement ___ Court trial ___		Private ___ Public Defender ___ Court Appointed ___ Self ___		Hispanic/Latino Origin ___ Yes ___ No ___		Black ___ White ___ Native Hawaiian/Pacific Islander ___ American Indian/Alaskan Native ___			
SENTENCING WORKSHEET #		WORKSHEET #		OF		CRIMINAL EVENT #		STAT. MAX		MAND. MIN		CASE # / DOCKET #			
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, Break the Cycle, Etc.)			
1 st Off				A. Relationship to CIS When Instant Offense Occurred				1 st Con. Off.				1 st Convicted Offense			
2 nd Off				0 = None or Pending Cases				TO				For Theft, Fraud, and Related Crimes, please indicate: Economic loss \$: _____ Subsequent Offense Proven: Yes ___ No ___ Restitution Requested: Yes ___ No ___			
3 rd Off				1 = Court or Other Criminal Justice Supervision											
1 st Off				B. Juvenile Delinquency				2 nd Con. Off.				2 nd Convicted Offense			
2 nd Off				0 = 23 years or older or crime-free for 5 years or no more than 1 finding of a delinquent act				TO				For Theft, Fraud, and Related Crimes, please indicate: Economic loss \$: _____ Subsequent Offense Proven: Yes ___ No ___ Restitution Requested: Yes ___ No ___			
3 rd Off				1 = Under 23 years old and: 2 or more findings of a delinquent act or 1 commitment											
1 st Off				C. Prior Adult Criminal Record				3 rd Con. Off.				3 rd Convicted Offense			
2 nd Off				0 = None 3 = Moderate				TO				For Theft, Fraud, and Related Crimes, please indicate: Economic loss \$: _____ Subsequent Offense Proven: Yes ___ No ___ Restitution Requested: Yes ___ No ___			
3 rd Off				1 = Minor 5 = Major											
1 st Off				D. Prior Adult Parole/Prob Violation				Overall Guidelines Range				Was the offender sentenced to a Corrections Options program under Commission criteria? Drug Court ___ Yes ___ No ___ Other ___ Yes ___ No ___			
2 nd Off				0 = No 1 = Yes				Multiple counts Only				Institutional/Parole Recommendation or Additional Information			
3 rd Off								TO				Worksheet Completed By			
								50% of Sentence Announced				Title			
								Yes ___ No ___				Sentencing Judge (Please Print)			
								Parole Notification				Sentencing Judge's Signature			
								Yes ___ No ___							

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

Appendix C:

Description of Types of Disposition

Disposition Type	Description
ABA Plea Agreement	The disposition resulted from a plea agreement that the court approved relating to a particular sentence, disposition, or other judicial action, and the agreement is binding on the court under Maryland Rule 4-243 (c).
Non-ABA Plea Agreement	The disposition resulted from a plea agreement reached by the parties but that was not approved by, and thus not binding on, the court.
Plea, No Agreement	The defendant pled guilty without any agreement from the prosecutor or judge to perform in a particular way.
Bench Trial	The disposition resulted from a trial without a jury in which the judge decided the factual questions.
Jury Trial	The disposition resulted from a trial in which 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.
Probation Revocation	Pursuant to Maryland Rule 4-347, a hearing to determine whether a violation has occurred, and if so, whether the probation should be revoked.

Appendix D:

Sentencing Guidelines Compliance by Offense Type, Fiscal Year 2008 (Most Common Person, Drug, and Property Offenses)

Person Offenses	N	% Within	% Below	% Above
Assault, 2 nd Degree	877	81.8%	13.2%	5.0%
Robbery	416	86.5%	9.6%	3.8%
Robbery with Dangerous Weapon	247	72.1%	21.9%	6.1%
Assault, 1 st Degree	208	70.7%	25.0%	4.3%
Wear, Carry, Transport Handgun	206	88.8%	9.7%	1.5%
Drug Offenses	N	% Within	% Below	% Above
Distribution Cocaine	1,638	80.4%	17.2%	2.4%
Distribution Heroin	746	90.3%	9.4%	0.3%
Distribution Marijuana	647	90.3%	7.9%	1.9%
Possession Marijuana	307	77.9%	2.9%	19.2%
Possession Cocaine	258	70.9%	22.9%	6.2%
Property Offenses	N	% Within	% Below	% Above
Theft or Theft Scheme, \$500 or Greater	373	75.9%	16.9%	7.2%
Burglary, 1 st Degree	276	76.4%	21.7%	1.8%
Burglary, 2 nd Degree	189	70.9%	28.0%	1.1%
Theft or Theft Scheme, Less Than \$500	144	70.8%	23.6%	5.6%
Burglary, 4 th Degree	97	67.0%	24.7%	8.2%

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).