

MARYLAND STATE COMMISSION ON
CRIMINAL SENTENCING POLICY

Annual Report 2010



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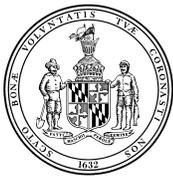
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MSCCSP



Maryland State Commission on Criminal Sentencing Policy

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David A. Soulé, Ph.D.

January 2011

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 upon the work of the Commission. In compliance with this statutory mandate, we respectfully submit for your review the 2010 Annual Report of the MSCCSP.

This report details the activities of the MSCCSP over the past year and provides an overview of circuit court sentencing practices and trends in Maryland for fiscal year 2010. Additionally, 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 2011. We hope that this report, combined with the other resources provided by the MSCCSP, help inform and promote fair, proportional, and non-disparate sentencing practices throughout Maryland.

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

Sincerely,

A handwritten signature in cursive script that reads "Howard S. Chasanow".

Judge Howard S. Chasanow, (Ret.)
Chairman

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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 2010, the MSCCSP classified new and amended offenses passed during the 2010 Legislative Session; reviewed the classification of current offenses to ensure consistency among offenses with similar penalties; adopted language clarifying that prior adjudications of *not criminally responsible* (NCR) or *not guilty by reason of insanity* shall not be included when calculating the prior record portion of the offender score; adopted changes to the language on the guidelines worksheet and instructions on guidelines calculations regarding the application of weapons points in the offense score for person offenses; voted to adopt a slight modification to the calculation rules for sentencing guidelines compliance; released an updated Maryland Sentencing Guidelines Manual and guidelines worksheet; and continued review of judicial compliance rates. The Sentencing Guidelines Subcommittee conducted a preliminary review of

the potential development of a risk assessment instrument to be utilized at sentencing. The MSCCSP also provided training and education to promote the consistent application of the sentence guidelines; provided data and sentencing related information to state agencies and other interested parties; completed several data verification and data entry reviews to improve the accuracy of the sentencing guidelines data; and continued work on the development of an automated sentencing guidelines system, as well as the development of a sentencing/correctional simulation model.

In fiscal year 2010, the MSCCSP received 10,892 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 (46.2%) or a non-ABA plea agreement (35.7%). Approximately half of convicted defendants (54.8%) were sentenced to both incarceration and probation (as opposed to incarceration only, probation only, or neither). The overall guidelines compliance rate in fiscal year 2010 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 the circuit with the largest number of defendants (Eighth Circuit) had the highest compliance rate.

Departures were least likely for person offenses, followed closely by drug 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 resolved by a plea agreement. Drug offenses resolved by a plea with no agreement had the lowest compliance rate, and the majority of departures in this category were sentenced below the guidelines.

Reasons for departure continued to be underreported in fiscal year 2010. When reported, the most commonly cited reason for departures below the guidelines was that the parties reached a plea agreement that called for a reduced sentence. In comparison, the most commonly cited reason for departures above the guidelines was a recommendation of the State's Attorney or Division of Parole and Probation.

In 2011, the MSCCSP will continue to review sentencing practice throughout the state and will provide training and education to ensure the consistent application of the sentencing guidelines. The MSCCSP will continue to meet individually with circuit court county administrative judges to review sentencing guidelines data and obtain feedback on their experiences with the sentencing guidelines. Additionally, the MSCCSP will employ the automated sentencing guidelines system in two pilot jurisdictions and will review projections from the sentencing/correctional simulation model with the Maryland Department of Public Safety and Correctional Services (DPSCS) to ensure accurate model specifications. The Commission's Sentencing Guidelines Subcommittee will continue to work on Phase I of the Commission's risk assessment review project. This sample of planned activities illustrates some of the efforts to be completed by the MSCCSP in 2011 to continue in working towards fulfilling its legislatively mandated mission to promote 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 are 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 use of a correctional population simulation model designed to forecast prison bed-space and resource requirements.

The Commission's enabling legislation also authorized the MSCCSP to conduct guidelines training and orientation for system participants and other interested parties. 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; Joseph I. Cassilly, State's Attorney for Harford County; Richard A. Finci, a criminal defense attorney from Prince George's County; Major Bernard B. Foster, Sr., Director of the Cecil County Detention Center; 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. The judicial appointees are Judge Arrie W. Davis, Court of Special Appeals of Maryland; Judge Alfred Nance, 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, Paul B. DeWolfe; and the Secretary of the Department of Public Safety and Correctional Services, Gary D. Maynard.

MSCCSP ACTIVITIES IN 2010

The MSCCSP met four times during 2010. Meetings were held on April 27, 2010, June 29, 2010, September 21, 2010, and December 14, 2010. In addition, the Commission's annual Public Comments Hearing was held on December 14, 2010 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 2010.

Modifications Related to New and Amended Offenses Passed During the 2010 Legislative Session

The MSCCSP reviewed new crime legislation from the 2010 Legislative Session and identified seven 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 November 1, 2010.

Table 1. Guidelines Offenses and Adopted Seriousness Categories Related to New Offenses, 2010 Legislative Session.

Legislation	Statute	Offense	Statutory Maximum	Adopted Seriousness Category
Senate Bill 517	CR, §9-805	Criminal Gang Offenses Organize, supervise, finance, or manage a criminal gang	20 years	III
Senate Bill 280/ House Bill 473	CP, §11-724(b)(1)	Sexual Crimes Willfully and knowingly violating conditions of lifetime sexual offender supervision, 1 st offense	5 years	V
Senate Bill 280/ House Bill 473	CP, §11-724(b)(2)	Sexual Crimes Willfully and knowingly violating conditions of lifetime sexual offender supervision, subsequent offense	10 years	IV

Table 1 continued.

Legislation	Statute	Offense	Statutory Maximum	Adopted Seriousness Category
House Bill 778	CR, §7-302(d)(3)(ii)	Telecommunications and Electronics, Crimes Involving Unauthorized computer access for sabotage of State government, public utilities, or other energy infrastructure, less than \$50,000	5 years	V
House Bill 778	CR, §7-302(d)(3)(i)	Telecommunications and Electronics, Crimes Involving Unauthorized computer access for sabotage of State government, public utilities, or other energy infrastructure, \$50,000 or greater	10 years	IV
House Bill 818/ Senate Bill 670	CR, §6-402(b)(2) CR, §6-403(c)(2)	Trespass Trespass on posted property or private property, 2 nd offense within 2 years after first violation	6 months	VII
House Bill 818/ Senate Bill 670	CR, §6-402(b)(3) CR, §6-403(c)(3)	Trespass Trespass on posted property or private property, 3 rd and subsequent offense within 2 years after preceding violation	1 year	VII

The MSCCSP considered amended crime legislation from the 2010 Legislative Session and identified five offenses which required a review of offenses with various alterations to the statutory language and/or changes to the penalty structure. For each offense, the MSCCSP decided to maintain the existing seriousness category classification. However, three of the five offenses still required modifications to the guidelines offense table to reflect revisions to the offense titles and mandatory minimum penalties. The five amended offenses and the various revisions are described in Table 2. The offense table updates were submitted to the AELR Committee and were adopted in the COMAR effective November 1, 2010.

Table 2. Guidelines Offenses and Adopted Seriousness Categories Related to Amended Offenses, 2010 Legislative Session.

Legislation	Statute	Offense	Prior Stat. Max. / Seriousness Category	New Stat. Max. / Seriousness Category
House Bill 365	CR, §3-203(c)	Assault and Other Bodily Woundings Assault on law enforcement officer or parole or probation agent, 2nd degree ^a	10 years / V	10 years / V ^b
Senate Bill 517	CR, §9-804(c)(1)(i)	Criminal Gang Offenses Participate as member of criminal gang in commission of crime ^c	10 years / One category more serious than most serious underlying offense. If no conviction on underlying offense, category=IV	10 years / One category more serious than most serious underlying offense. If no conviction on underlying offense, category=IV ^b
Senate Bill 517	CR, §9-804(c)(1)(ii)	Criminal Gang Offenses Participate as member of criminal gang in commission of crime resulting in death of victim ^c	20 years / One category more serious than most serious underlying offense. If no conviction on underlying offense, category=III	20 years / One category more serious than most serious underlying offense. If no conviction on underlying offense, category=III ^b
Senate Bill 622/ House Bill 254	CR, §3-304(c)(2)	Sexual Crimes Rape, 2nd degree, adult offender with victim younger than 13 years old	20 years / II (MM=5 years)	LIFE / II ^b (MM=15 years)
Senate Bill 622/ House Bill 254	CR, §3-306(c)(2)	Sexual Crimes Sex Offense, 2nd degree, adult offender with victim younger than 13 years old	20 years / II (MM=5 years)	LIFE / II ^b (MM=15 years)

^a The Legislature added parole and probation agents to the classes of law enforcement officers covered by the offense Assault – Law Enforcement Officers. There was no change to the penalty structure.

^b No change to seriousness category.

^c The Legislature altered the definition of “criminal gang” for purposes of the gang statute and expanded the list of underlying crimes for criminal gang activity. There was no change to the penalty structure.

MM = Non-suspendable mandatory minimum penalty.

Guidelines Rules Modifications in 2010

At the September 14, 2009 meeting, the MSCCSP voted to adopt language clarifying that prior adjudications of *not criminally responsible* (NCR) or *not guilty by reason of insanity* shall not be included when calculating the prior record portion of the offender score. This change was submitted to the AELR Committee and was adopted in the COMAR effective May 1, 2010.

At the December 8, 2009 meeting, the MSCCSP voted to adopt changes to the language on the guidelines worksheet and instructions on guidelines calculations regarding the application of weapons points in the offense score for person offenses. Specifically, references to the “usage” or “use” of a weapon were changed to “presence” in order to clarify that points should be awarded whenever a weapon is present, rather than utilized or employed. This change was submitted to the AELR Committee and was adopted in the COMAR effective May 1, 2010.

At the June 29, 2010 meeting, the MSCCSP voted to adopt a slight modification to the calculation rules for sentencing guidelines compliance. The rule modification deems a sentence compliant with the guidelines range if the judge sentenced a defendant to a period of pre-sentence incarceration time with no additional post-sentence incarceration time and the length of credited pre-sentence incarceration exceeds the upper guidelines range for the case. In other words, judges are not “penalized” for an above the guidelines sentence if the sentence only includes credited pre-incarceration time. This change was submitted to the AELR Committee and was adopted in the COMAR effective November 1, 2010.

Clarification on Classification of Specified Controlled Dangerous Substances

At the September 21, 2010 meeting, the MSCCSP sought to clarify the offense seriousness categories for offenses involving the following three specific substances: buprenorphine, methadone, and oxycodone. These three substances are not explicitly listed in the guidelines offense table and therefore the MSCCSP staff believed that criminal justice practitioners may find it difficult to calculate the sentencing guidelines for offenses involving these specific substances. In order to properly classify the offenses associated with these substances, the MSCCSP sought input from Dr. Ross Lowe, the Chemistry Section Manager for the Maryland State Police Lab and from Dr. Thomas Cargiulo, Director of the Maryland Alcohol and Drug Abuse Administration (ADAA), a division within the Maryland Department of Health and Mental Hygiene (DHMH). After completing a thorough statutory review and based on the information provided by Dr. Lowe and Dr. Cargiulo, the MSCCSP voted to adopt *distribution of*

buprenorphine as a seriousness category IV drug offense, *distribution of methadone* as a category IIIB drug offense, and *distribution of oxycodone* as a category IIIB drug offense. These additions to the guidelines offense table will be submitted to the AELR Committee and adopted in the COMAR in 2011.

Updates to the Maryland Sentencing Guidelines Manual and Worksheet

On May 1, 2010, the MSCCSP released an updated version of the Maryland Sentencing Guidelines Manual (MSGM) and the guidelines worksheet (version 1.6). The new manual provided several updates including: 1) all references to the “usage” or “use” of a weapon were changed to “presence” to reflect the Commission’s position that offense score points shall be assigned when a weapon was present during the commission of a crime, even if the offender did not use the weapon; 2) revisions to instructions for computing the offender score involving prior adjudications of *not criminally responsible*; and 3) minor edits and updated examples using the latest version of the guidelines worksheet. The updated worksheet also reflects the change of “weapon use” to “weapon presence”.

Training and Education

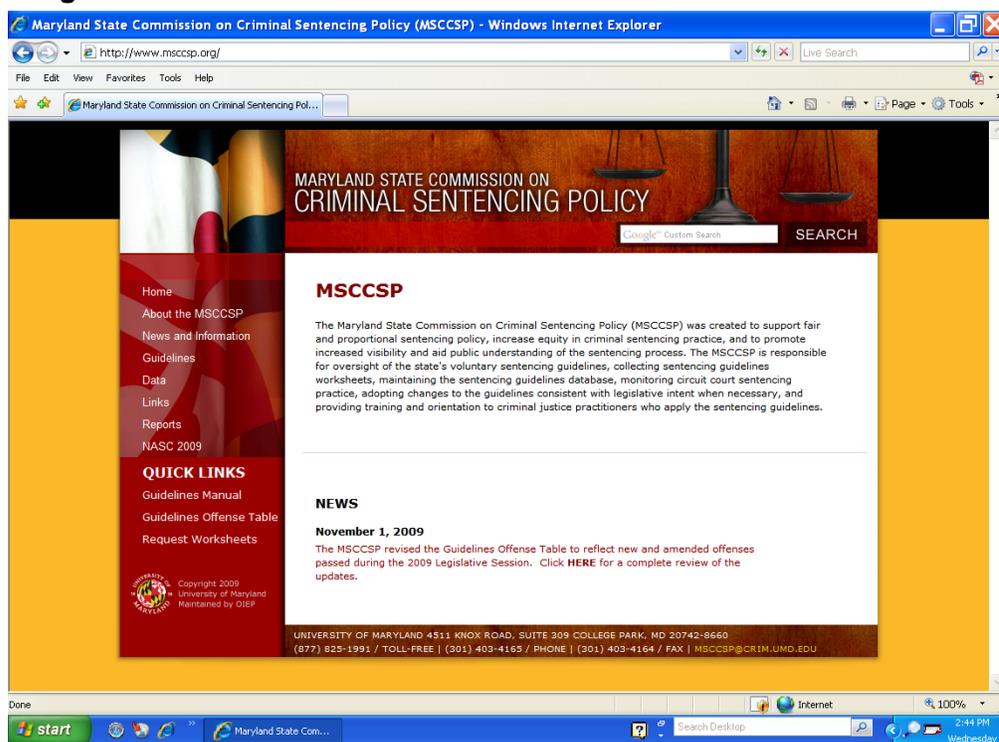
In an effort to promote the consistent application of the guidelines and accurate completion of the guidelines worksheet, the MSCCSP continues to provide regular training and education for criminal justice practitioners around the state. Training sessions offer a comprehensive overview of the sentencing guidelines calculation process and include detailed instructions for completing the offender and offense scores, an explanation of common omissions/mistakes, and several examples of more complicated sentencing guidelines scenarios. In 2010, the MSCCSP provided guidelines training sessions that were attended in total by approximately 165 participants, including circuit court judges, State’s Attorneys, and Public Defenders. During the past year, the MSCCSP also began discussions with the Criminal Law Section of the Maryland State Bar Association to work together to provide a continuing legal education (CLE) program for training on the sentencing guidelines focusing on private attorneys who do not regularly participate in the training sessions offered to various public agencies.

On October 26, 2010, an educational presentation was provided for new appointees to the circuit bench at the New Trial Judges Orientation at the Towson Sheraton Hotel. Additionally, the MSCCSP executive director met with 16 of the 24 circuit court county administrative judges in 2010. These meetings provided an opportunity for the MSCCSP to review sentencing

guidelines related data with the individual jurisdictions and allowed the MSCCSP to receive feedback from the judges on areas of interest or concern regarding the activities of the Commission.

In addition to providing training and education programs, the MSCCSP staff is available via phone (301-403-4165) and e-mail (mccsp@crim.umd.edu) from 8 a.m. to 5 p.m., Monday through Friday, to provide prompt responses to any questions or concerns regarding the sentencing guidelines. 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.

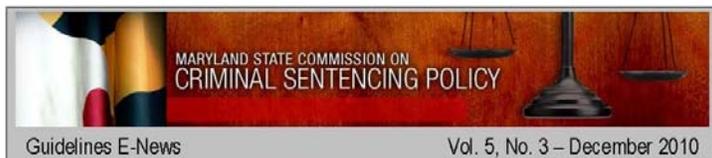
Image 1: MSCCSP Website.



The MSCCSP also maintains a website (www.mccsp.org), which was redesigned in 2009 to provide a streamlined, more user friendly format. The website is continually updated to provide materials for criminal justice practitioners regarding the application of the guidelines, including text-searchable and print-friendly copies of the most recent version of the MSGM and the

Guidelines Offense Table, a list of offenses with non-suspendable mandatory minimum penalties, a list of offenses with seriousness category revisions, a sample of Frequently Asked Questions (FAQ) and their respective answers, and other relevant reports. The MSCCSP website also provides minutes from prior Commission meetings in addition to information such as the date, location, and agenda for upcoming meetings.

Image 2: Sample Guidelines E-News.



Impact of Recent Court of Appeals Decisions on Binding Plea Agreements within the Guidelines

The Maryland Court of Appeals recently filed opinions in *Cuffley v. State* (2010) and *Baines v. State* (2010) which impact the use of a binding plea agreement that calls for a sentence “within the sentencing guidelines”. In summary, *Cuffley* and *Baines* find:

If the parties to a binding plea agreement agree that the defendant will be sentenced “within the guidelines,” without making clear on the record of the plea proceeding that the guidelines sentence refers only to actual incarceration, then the court may not impose a sentence that includes a suspended portion in excess of the maximum sentence provided by the guidelines.

The Court did recognize that the *Maryland Sentencing Guidelines Manual (MSGM)* states that “suspended time is *not* considered in determining whether the sentence falls within the recommended guidelines range” and “the guidelines range represents only non-suspended time” (*MSGM*, ch. 13.1 at 55, 2010). However, the findings in *Cuffley* and *Baines* emphasize that the State or defense counsel must make the terms of the agreement absolutely clear on the record of the plea proceeding and the term must be fully explained to the defendant on the record before the court accepts the defendant’s plea.

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) shares this information to ensure that all parties are aware of these recent findings. A reference to the *Cuffley* and *Baines* opinions has been added to the corresponding page (p. 55) of the *MSGM* to reflect the impact of these decisions. This updated page is attached and may be printed and inserted in place of the affected page of your hard copy of the *May 2010 MSGM*.

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In 2010, the Commission continued to deliver timely notice of guidelines relevant information via 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 serves as an information source on sentencing policy decisions. For example, the December 2010 issue (Vol. 5, No. 3) reviewed two Court of Appeals decisions (*Cuffley v. State*, 2010 and *Baines v. State*, 2010) that impact the use of a binding plea agreement that calls for a sentence “within the guidelines.” This E-News highlighted these decisions to make sure that criminal justice practitioners were aware of the findings.

Information, Data Requests, and Outreach

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 2010, the Commission responded to approximately 40 requests for data and/or specific information related to sentencing trends throughout the state. Requests for information and data are submitted by a variety of organizations/individuals, including the Governor's Office, legislators, circuit court judges, law clerks, prosecutors, defense attorneys, parole and probation agents, victims and their family members, defendants and their family members, faculty/students of law and criminal justice, government agencies, media personnel, and other interested citizens. In response to these inquiries, the MSCCSP typically provides an electronic data file created from the information collected on the sentencing guidelines worksheets and/or produces special reports analyzing sentencing trends for specific offenses and/or specific time periods. Additionally, the MSCCSP annually completes a topical report entitled, "Maryland Sentencing Guidelines Compliance and Average Sentence for the Most Common Person, Drug, and Property Offenses." This report summarizes sentencing guidelines compliance and average sentence for the five most common offenses in each crime category (person, drug, and property) and is posted on the MSCCSP website. An abbreviated version of the report is provided in Appendix C.

The MSCCSP is also responsible for responding to the Legislature's request for information to help produce fiscal estimate worksheets for sentencing related legislation while the General Assembly is in session. In 2010, the Commission provided information for 97 separate bills that proposed modifications to criminal penalties or sentencing/correctional policies.

Finally, the MSCCSP works to provide outreach to other criminal justice stakeholders in an effort to raise awareness regarding the resources provided by the Commission. In 2010, the MSCCSP executive director presented at board meetings for the Maryland Parole Commission, as well as the State Board of Victims' Services. The purpose of the presentations was to update fellow criminal justice practitioners on the work of the MSCCSP and to provide feedback on the data and information collected by the Commission. The MSCCSP is also actively involved in the work of the National Association of Sentencing Commissions (NASC). NASC was established in 1992 to facilitate the exchange of information, data, expertise, and experiences on issues related to sentencing policies, guidelines, and commissions. The Commission's executive director is currently the vice-president of NASC and moderated a panel on the expanding role of sentencing commissions at the 2010 annual conference in Alabama.

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 reviews guidelines worksheets as they are received. The staff verifies that the guidelines worksheets are being completed accurately and contacts those who prepared the worksheets to notify them of detected errors in an effort to reduce the likelihood of repeat mistakes. Once the guidelines worksheets are reviewed, they are data-entered into the Maryland sentencing guidelines database.

Each year, the staff spends considerable time checking and cleaning the data maintained within the Maryland sentencing guidelines database in an effort to maximize the accuracy of the data. These data verification activities typically involve: (1) identifying cases in the database with characteristics likely to result in data entry error, (2) reviewing the guidelines worksheets for these cases, and (3) making corrections to the records in the database when necessary. The MSCCSP staff also routinely researches missing values on key variables through the Maryland Judiciary Case Search website. Finally, the MSCCSP staff regularly verifies and updates the database containing the guidelines offenses. Checking and cleaning the data on a regular basis throughout the year allows for increased confidence in the accuracy of the data and permits more reliable offense-specific analyses of the data.

Subcommittee Work

The Commission's Sentencing Guidelines Subcommittee plays a critical role in reviewing all proposed amendments and updates to the sentencing guidelines. The Subcommittee is chaired by Dr. Charles Wellford (Professor, University of Maryland). Other members of the Subcommittee include Richard Finci (defense attorney), Senator Delores Kelley (Baltimore County), Laura Martin (State's Attorney, Calvert County), and the Honorable Alfred Nance (Judge, Baltimore City Circuit Court). Each year, the Sentencing Guidelines Subcommittee reviews all new and revised offenses adopted by the General Assembly and provides recommendations to the full Commission for seriousness category classification. Additionally, the Subcommittee regularly reviews suggested revisions to the guidelines calculation process and reports to the overall Commission on guidelines compliance data. In 2010, the 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. In the past year, the Sentencing Guidelines Subcommittee also made recommendations to the

full Commission regarding the adoption of: (a) modifications to the sentencing guidelines compliance calculation in cases involving credited time; and (b) seriousness category classifications for offenses involving the illegal distribution/manufacture of buprenorphine, methadone, and oxycodone.

In May 2010, the Judiciary Ad Hoc Committee on Sentencing Alternatives, Reentry, and Best Practices invited the MSCCSP to its May 26, 2010 meeting to discuss the possibility that the MSCCSP, with legislation and additional funding, might take on additional functions of recidivism prevention research and creation of a risk assessment tool to be utilized at sentencing. At the June 29, 2010 MSCCSP meeting, the Commission agreed to undertake a preliminary examination of the utilization of risk assessment at sentencing and assigned this task to the Commission's Sentencing Guidelines Subcommittee. The preliminary review was the first phase in a proposed multi-stage process towards creation of a sentencing risk assessment tool. Phase I includes a review of research on risk assessment, an examination of how other states, such as Virginia and Missouri, have incorporated risk assessment into the sentencing process, an analysis of the risk assessment instruments being utilized by other agencies in Maryland, and ultimately the development of a recommendation regarding risk assessment that could be considered by the MSCCSP and the Maryland Judicial Conference.

As part of the Phase I review, members of the Sentencing Guidelines Subcommittee and MSCCSP staff participated in an educational seminar on risk assessment guided by Dr. James Austin, a nationally renowned corrections expert who is currently working as a consultant with the Maryland Department of Public Safety and Correctional Services (DPSCS) to help develop and revise risk assessment instruments for parole, probation, corrections, and pre-trial services.

The Sentencing Guidelines Subcommittee also reviewed a survey conducted with judges attending a Judicial Institute seminar on sentencing that indicated a favorable position to access to risk assessment information to augment their sentencing decisions. Finally, the Subcommittee invited Phillip Pie, Deputy Secretary for Programs and Services at DPSCS to provide an overview on the various risk instruments being utilized in Maryland by DPSCS. The Subcommittee will continue the Phase I review in 2011 and plans to next assess the risk instruments being utilized in Virginia and Missouri.

Sentencing/Correctional Simulation Model

The MSCCSP continues to work to develop 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 model relies on discrete-event simulation technology that allows Commission staff to manipulate sentencing records based on guideline revisions and assess the impact changes will have on guideline recommendations, as well as future prison populations. The MSCCSP will use the simulation model to assess the impact that guideline revisions may have on correctional resources. The developers at ARS are currently testing the population projection component.

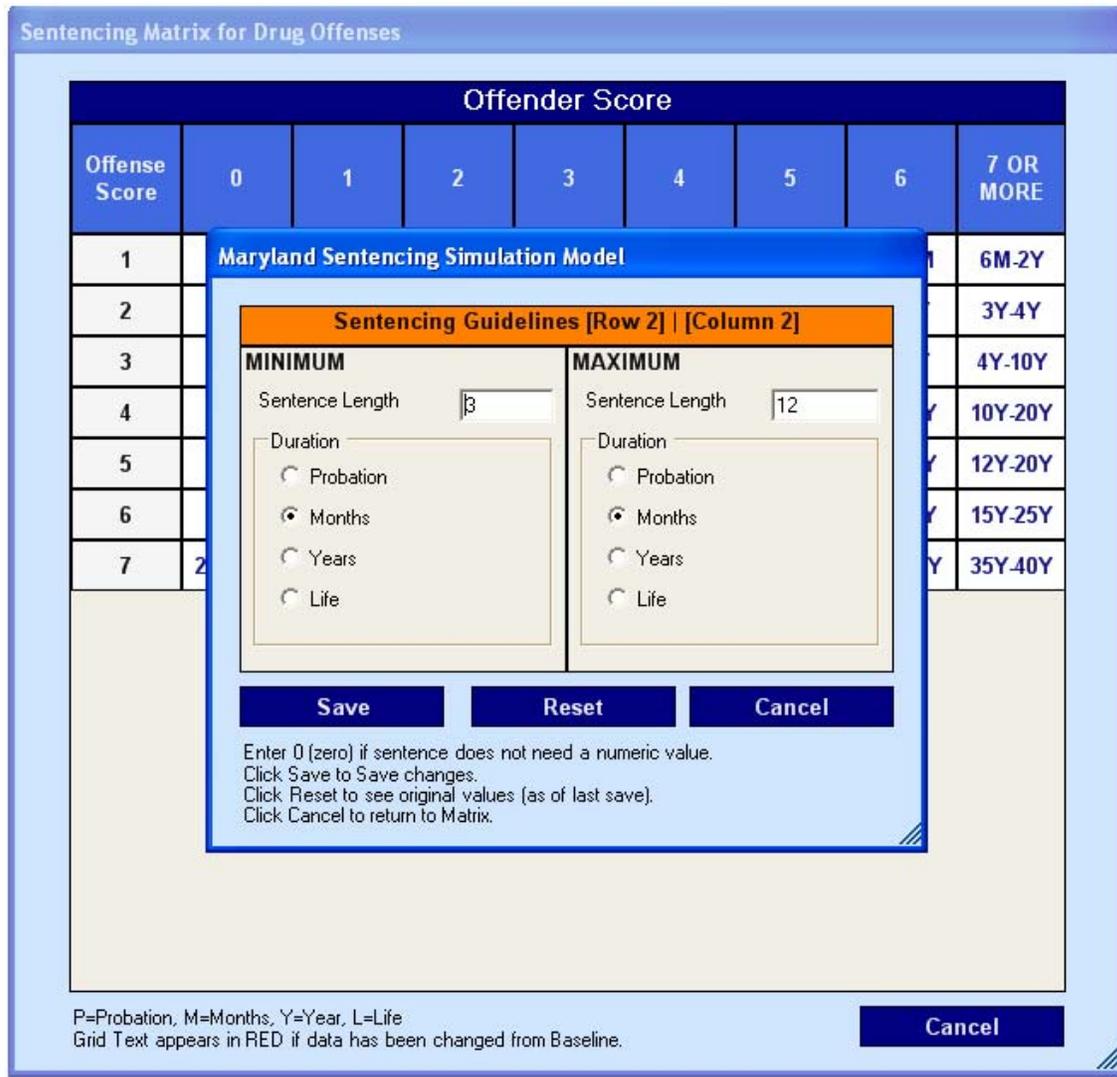
Image 3: Simulation Model – Opening Interface.



To input and organize different policy scenarios, the model relies on a Scenario Manager that allows users to catalog hundreds of different policy scenarios (guideline revisions). Image 3 illustrates the opening interface used to access different model features, including: creation of new policy scenarios, modification of existing scenarios, importation of new data, and creation of reports.

In most instances, the MSCCSP will utilize the simulation model to create and revise proposed scenarios. To help with scenario creation, the model includes input screens to revise parameters used to compute sentence recommendations. Image 4 illustrates a simple matrix screen that allows users to change cell parameters by simply clicking on the cell.

Image 4: Simulation Model – Matrix Parameters.



In addition to matrices and offender/offense scores, the MSCCSP routinely examines offense seriousness categories. The offense manager permits users to change seriousness categories or impose a mandatory minimum as part of a test scenario. To do this, users simply access the offense manager (Image 5), which includes the most current list of Maryland offenses.

Image 5: Simulation Model – Offense Manager.

Maryland Sentencing Simulation Model

Criminal Codes | **Meta Data**

Most Common Offenses

Baseline	Offense Lit	CJIS	Source	Level	Type	Sever
Y	Abuse and	1-0334	CR, §3-601	Felony	Person	II
Y	Abuse and	1-0322	CR, §3-602	Felony	Person	II
Y	Abuse and	1-0335	CR, §3-601	Felony	Person	II
Y	Abuse and	2-0238	CJ, §3-8A-	Misd.	Person	VI
Y	Abuse and	1-0481	CR, §3-603	Misd.	Person	V
Y	Abuse and	2-3899	FL, §10-20	Misd.	Person	VII
Y	Abuse and	(null)	CJ, §3-828	Misd.	Person	VI
Y	Abuse and	(null)	HG, § 7-11	Misd.	Person	VII
Y	Abuse and	1-0466, 2-0	CR, §3-605	Misd.	Person	V
Y	Abuse and	2-1138	CR, §3-604	Felony	Person	IV
Y	Accessory	1-1480	CR, §1-301	Felony	Person	V
Y	Assault an	1-1420	CR, §3-202	Felony	Person	III
Y	Assault an	1-1415	CR, §3-203	Misd.	Person	V
Y	Assault an	(null)	(null)	Misd.	Person	IV
Y	Assault an	(null)	(null)	Felony	Person	III
Y	Assault an	(null)	(null)	Felony	Person	III

Filter by

Offense Type: **Show**
 All Changed
 Misd. Felony

Severity Categ:

Make Changes

Min
 Day
 Month
 Year
 Life

Max
 Day
 Month
 Year
 Life

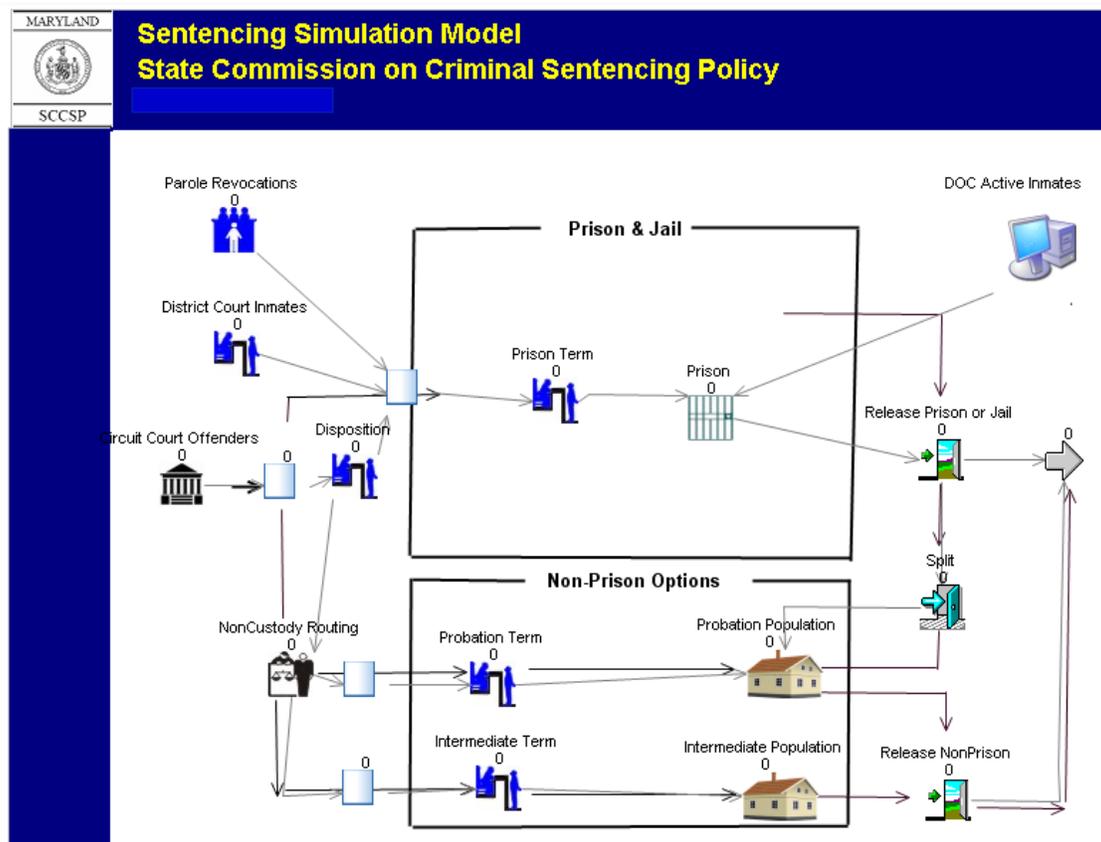
Severity

Man-Min
 checked=Yes

Current Record
 ID:
 CJIS:

Note: Resetting to BaseLine values will OVERWRITE the changed values. Use caution when using this option.

Once the user has entered the proposed revisions into the scenario manager, the model's MS-SQL database rebuilds the raw sentencing records using the new parameters to re-compute a new sentence recommendation. At the same time, the model is building a complex series of historical probability tables to estimate the actual sentence within the recommended range and whether the offender should receive a prison or non-prison sentence. The new sentence and probability tables are then passed to the simulation engine (Simul8) that has a user-friendly graphic interface (Image 6) that users can easily change to fit the particular scenario under investigation.

Image 6: Simulation Model – Graphic Interface.

At this point, the MSCCSP can analyze the results compared to the original sentence, or it can move to a more advanced stage where the new recommendation is used as part of the prison population projection. To estimate time-served, the model also imports data from the DOC, including intake, active, and release files.

Currently, the MSCCSP is working with ARS and projection analysts at the DPSCS to conduct tests to verify the accuracy of the population projection component that relies on the DOC data. When the MSCCSP and the DPSCS are satisfied that the projections meet their standards, the MSCCSP will develop a plan to utilize the model to help inform future sentencing policy decisions.

Maryland Automated Guidelines System (MAGS)

In 2010, the MSCCSP continued to work on development of an automated web-based sentencing guidelines system that will allow criminal justice practitioners to complete and submit worksheets electronically. The goal of the Maryland Automated Guidelines System (MAGS) is to fully automate sentencing guidelines calculation in a web-enabled application that will allow

criminal justice practitioners to complete and submit sentencing guidelines worksheets electronically. The web-enabled system will calculate guidelines scores automatically and present the appropriate sentencing guidelines range for each case. Additionally, MAGS will allow users to run multiple sentencing scenarios, enabling them to determine the appropriate guidelines range under varying sentencing conditions. Users will be able to print a hard copy of the computed guidelines worksheet for each case. This hard copy may be presented to the opposing counsel and to the judge for review prior to sentencing. The sentencing judge will be responsible for entering all appropriate sentencing information into MAGS. The judge will then approve the worksheet and submit it electronically to the MSCCSP sentencing guidelines database.

Image 7: Maryland Automated Guidelines System – Sentence.

The screenshot displays the 'Sentence' tab of the Maryland Automated Guidelines System (MAGS) interface. The header features the Maryland State Commission on Criminal Sentencing Policy logo and a navigation menu with options: Offender Information, Offender Score, List of Offenses, **Sentence**, Victim Information, and Departure / Submit. Below the menu, the offender's details are shown: First Name: Chestnut, Last Name: Kevin, and SID: 4234567. The main content area contains a table of offenses with the following data:

Event No	Offense Description	Docket No.	Sentence	Entered
1	Robbery with a dangerous or deadly weapon	105277010	Add / Edit	<input type="checkbox"/>
1	Possession or use of a machine gun in	105277010	Add / Edit	<input type="checkbox"/>
1	Possession - Marijuana	105277010	Add / Edit	<input type="checkbox"/>

The interface also includes a 'Previous' and 'Next' button at the bottom of the table. The Windows taskbar at the bottom shows the system time as 12:30 PM on Monday.

There are many benefits to the automation of the sentencing guidelines worksheet completion and submission process. First, the MSCCSP believes automation will help to significantly reduce errors that can occur when the guidelines are manually calculated. These errors include mathematical miscalculation, selection of an incorrect seriousness category, and selection of an

incorrect 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. Finally, the automated system will allow the MSCCSP to select specific data fields that will need to be completed before a user can submit a final record. For example, the system will require judge's to provide a reason for departure in appropriate cases and will prompt the user to provide the amount of economic loss in cases involving theft and fraud related offenses. All of these automated data checks will help ensure that the Commission is able to collect all required data fields and consequently should lead to more timely and accurate assessment of sentencing policy and practice in Maryland.

During the initial development phase of the automated model, the MSCCSP collaborated with programmers at the University of Maryland to establish a framework for a web-based application. In July 2008, the MSCCSP secured additional funding through a grant with the Governor's Office of Crime Control & Prevention (GOCCP) to collaborate with programmers who have extensive experience working with Maryland criminal justice data systems. A preliminary version of the model has been developed by the programmers and has been tested by MSCCSP staff. The development has steadily progressed in the past two years as the MSCCSP staff conducted several rounds of reviews to ensure the model is capable of calculating all potential sentencing scenarios. In April 2010, the MAGS application was demonstrated at a quarterly meeting of the MSCCSP. The Commissioners provided feedback on the model and a discussion was initiated regarding the logistics of how the automated process will work with respect to the case flow of the criminal sentencing process. The MSCCSP is currently working to identify two pilot jurisdictions to volunteer to utilize the automated system starting in early 2011. DPSCS will host the application on their server, and the programmers are working with the Information Technology and Communications Division to facilitate compatibility with the host environment.

Public Comments Hearing

The MSCCSP held its annual public comments hearing at the House Office Building in Annapolis on December 14, 2010. The annual 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. Six individuals testified during the 2010 public comments hearing, speaking about a range of topics

including concern for the sentencing guidelines being voluntary, as opposed to mandatory; sentencing offenders to local correctional facilities for periods greater than 18 months; and the importance of continuing to collect information related to the rights of victims at sentencing on the sentencing guidelines worksheet.

SENTENCES REPORTED IN FY 2010

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

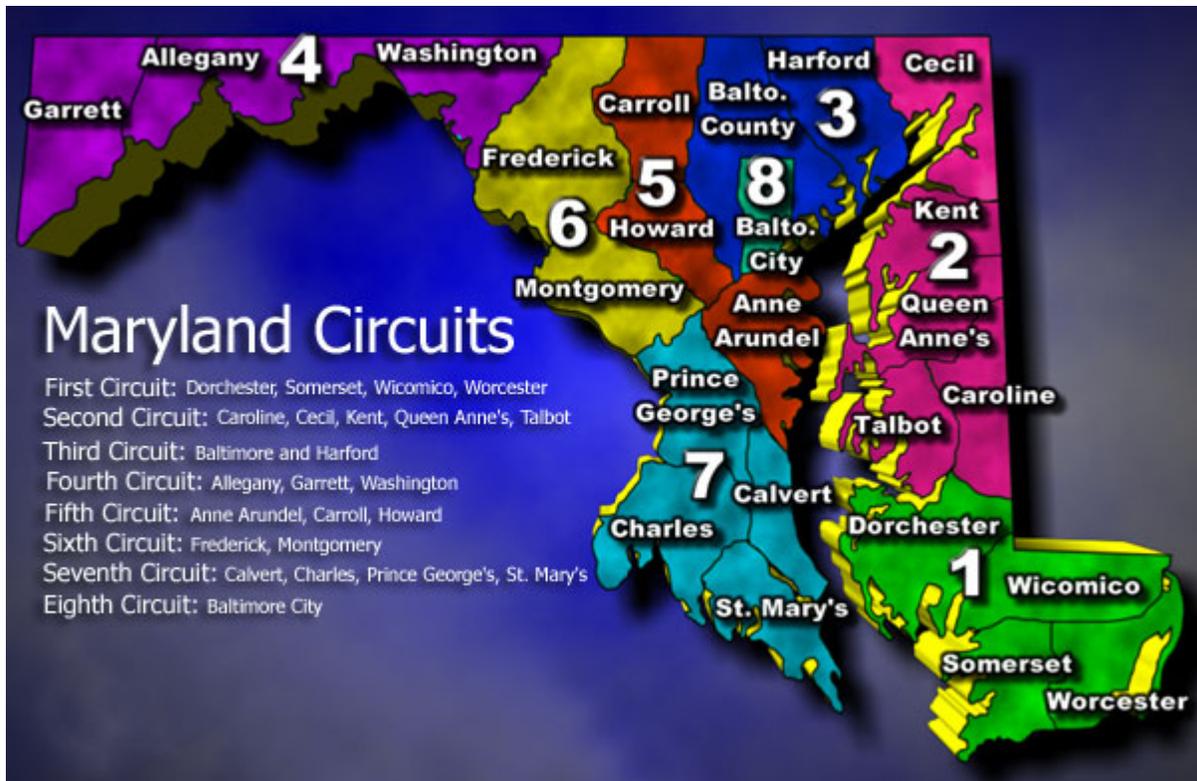
In fiscal year 2010, the MSCCSP received 10,892 worksheets. Table 3 provides a breakdown of the number and percentage of worksheets received in fiscal year 2010 by circuit. The jurisdictions in each circuit are shown in Figure 1. The largest number of guidelines worksheets (2,953) was received from the Eighth Circuit (Baltimore City), while the smallest number (498) was received from the Second Circuit (Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties).

Table 3. Number and Percentage of Worksheets Submitted by Circuit, Fiscal Year 2010

Circuit	Number of Worksheets Submitted	Percent of Total Worksheets Submitted ^a
1	840	7.7%
2	498	4.6%
3	1,856	17.0%
4	757	7.0%
5	1,307	12.0%
6	892	8.2%
7	1,789	16.4%
8	2,953	27.1%
TOTAL	10,892	100.0%

^a Percentages may not total 100% due to rounding.

Figure 1. Maryland Judicial Circuits



Source: <http://www.courts.state.md.us/clerks/circuitmap2.jpg>

Case Characteristics

Figures 2 through 4 summarize the descriptive characteristics from the 10,892 worksheets submitted for offenders sentenced in fiscal year 2010. Most were male (87.1%) and African-American (64.8%). The median age of offenders at date of sentencing was 27.5 years. The youngest offender was 15, while the oldest was 85 years of age. Approximately 20% of offenders were under 21 years of age; 41% were 21-30 years old; 19% were 31-40 years old; and the remaining 20% were 41 years or older.

Figure 2. Distribution of Cases by Gender of Offender, Fiscal Year 2010

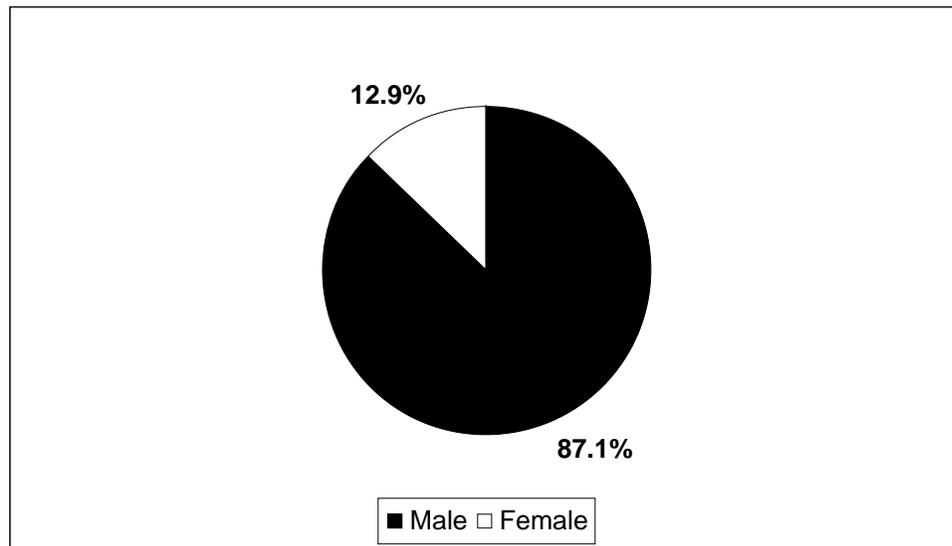


Figure 3. Distribution of Cases by Race of Offender, Fiscal Year 2010

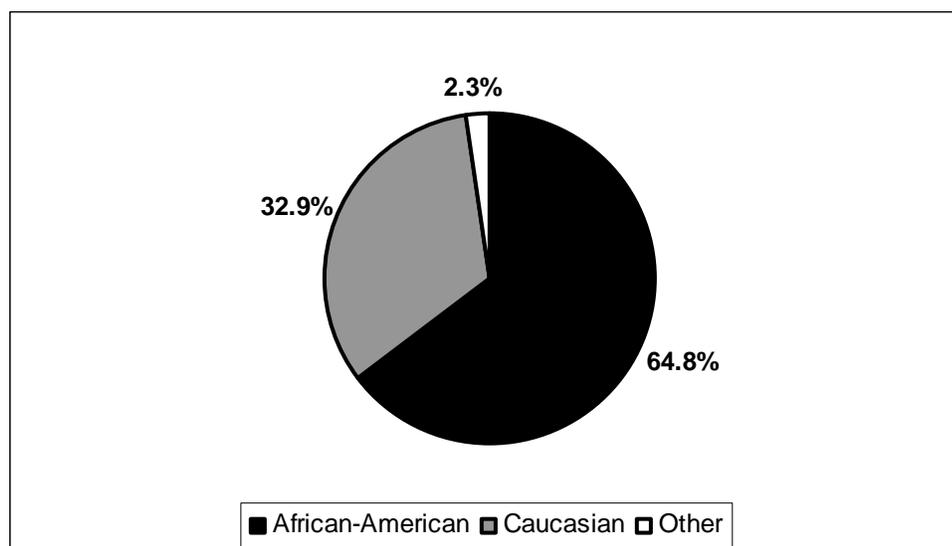
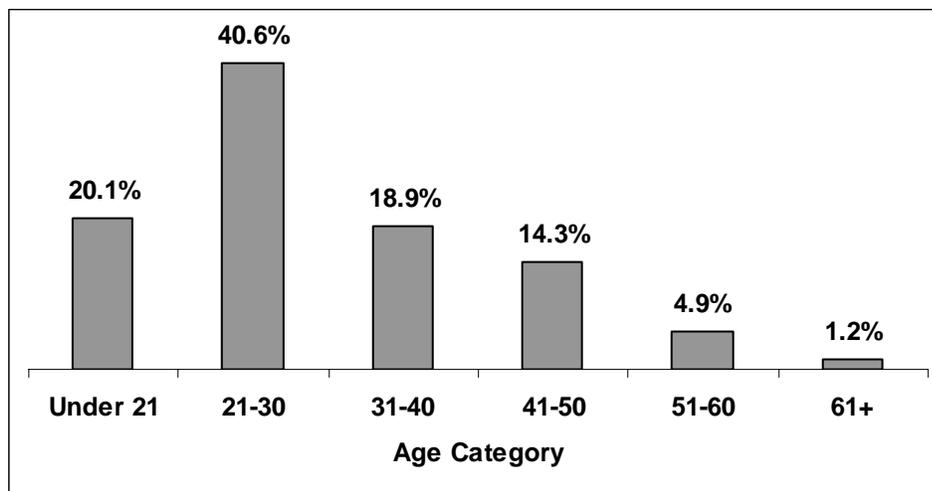


Figure 4. Distribution of Cases by Age of Offender, Fiscal Year 2010

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=26) and probation revocation cases (N=5).¹ Figure 5 provides a breakdown of cases by crime category. For cases involving multiple offenses, only the most serious offense was considered. Cases involving an offense against a person were most common (40.8%), followed closely by drug cases (39%). In 20.2% 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 (44.3% person, 36.2% drug, 19.5% property).²

¹ Effect September 1, 2009, the MSCCSP determined that a Maryland Sentencing Guidelines Worksheet does not need to be completed for probation revocations.

² Incarceration includes home detention and credited time, as well as post-sentence jail/prison time.

Figure 5. Distribution of Cases by Crime Category, Fiscal Year 2010

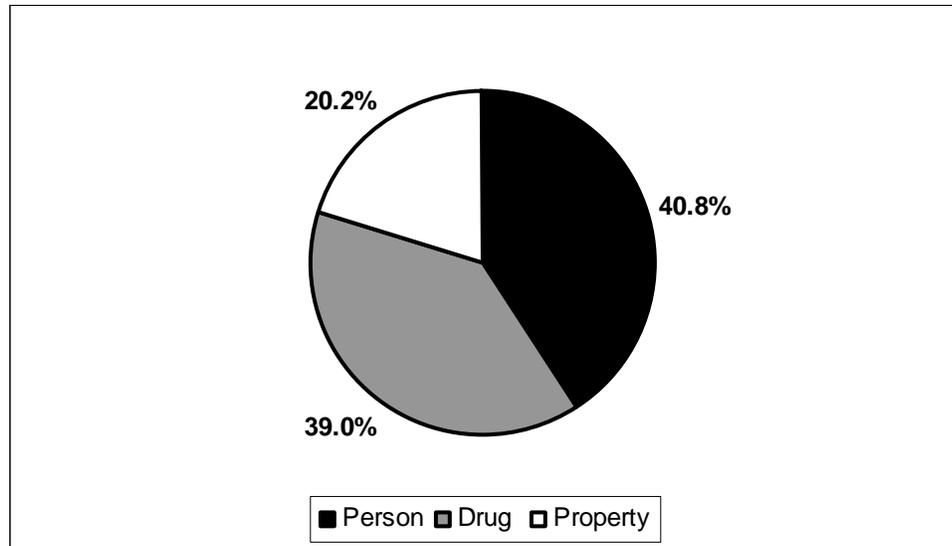
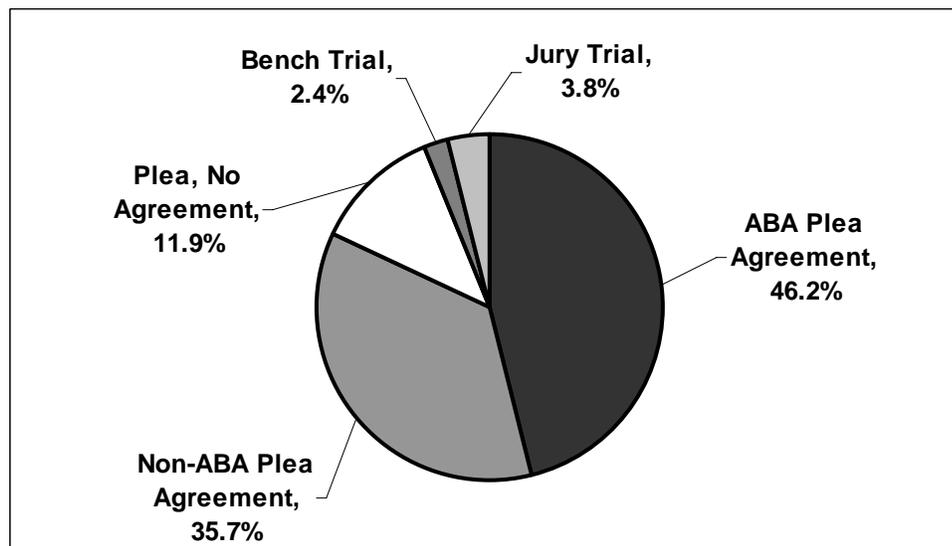


Figure 6 summarizes the distribution of cases by disposition type (Appendix D contains a description of the eight major disposition types listed on the sentencing guidelines worksheet). The vast majority of cases were resolved by either an ABA plea agreement (46.2%) or a non-ABA plea agreement (35.7%). An additional 11.9% were resolved by a plea with no agreement, and 6.2% of cases were resolved by either a bench or jury trial (2.4% and 3.8%, respectively).

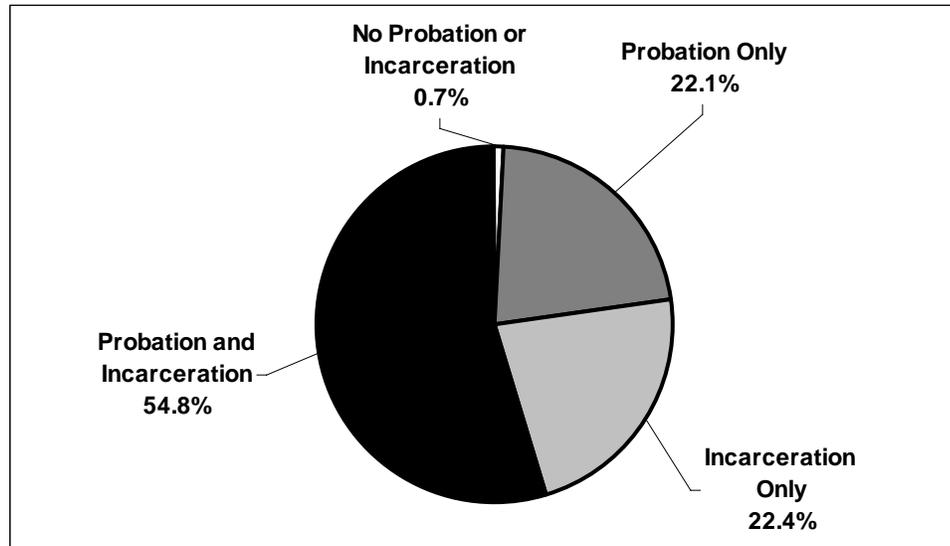
Figure 6. Distribution of Cases by Disposition, Fiscal Year 2010



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. Approximately 22% of offenders

were sentenced to incarceration only. Similarly, 22% 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 2010



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.

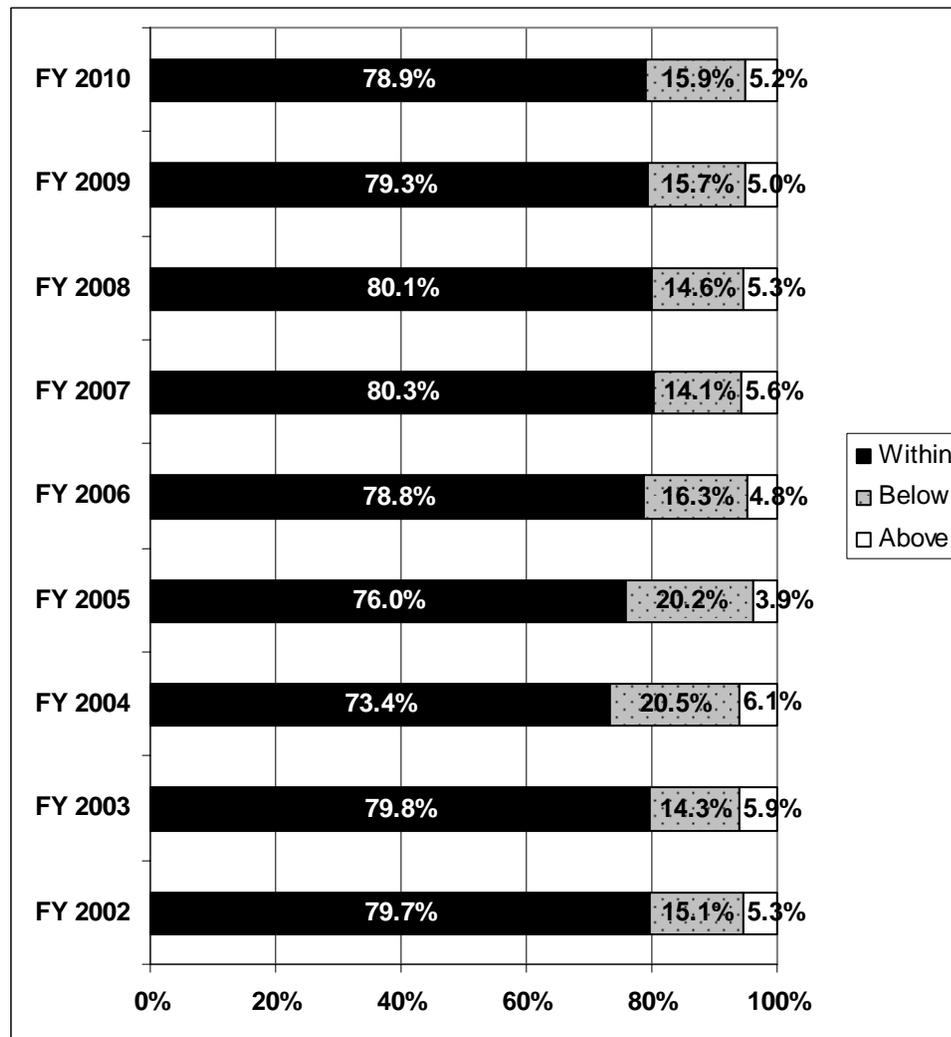
Judicial Compliance Rates Overall

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, the MSCCSP has deemed a sentence compliant if the judge sentenced a defendant to a period of pre-sentence incarceration time with no additional post-sentence incarceration time and the length of credited pre-sentence incarceration exceeds the upper guidelines range for the case. 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., drug court; Health General, §8-507 commitments; 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 the past nine fiscal years (2002-2010). Fiscal year 2002 was selected as the initial year for this trend analysis because the changes to the definition of a compliant sentence noted above became effective at the start of fiscal year 2002. The figure indicates that in all nine years, the overall rate of compliance exceeded the Commission's goal of 65% compliance.³ The aggregate compliance rate remained relatively unchanged from one year to the next, ranging from a low of 73.4% in fiscal year 2004 to a high of 80.3% in fiscal year 2007.

³ 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)**

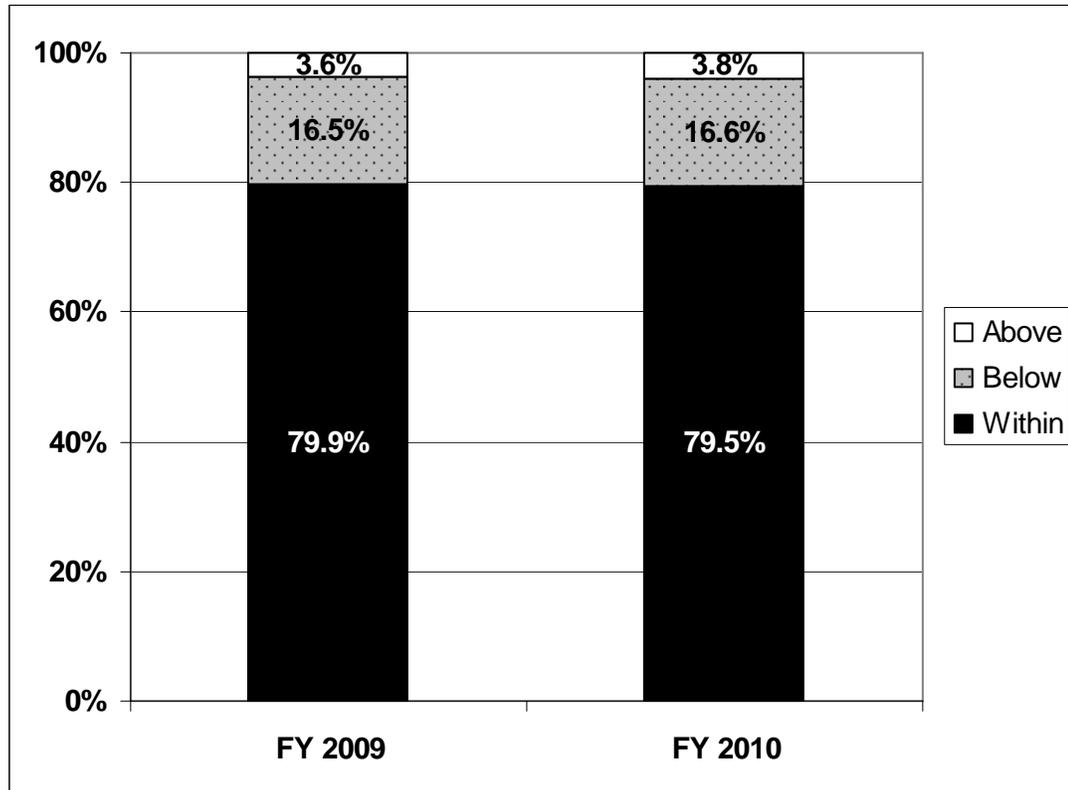


Analyses of judicial compliance in Maryland have traditionally focused on sentences for single count convictions because they permit the most direct comparison of compliance by crime category and by offense type, within the applicable cell of the sentencing matrix. Since multiple count convictions can 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 2009 and 2010. Of the 10,892 sentencing guidelines worksheets submitted to the MSCCSP in 2010, 8,461 (78%) contained single count convictions.

Figure 9 provides a breakdown of the overall guidelines compliance rates for fiscal years 2009 and 2010 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 cases were compliant in both fiscal years. When departures occurred, they were more often below the guidelines rather than above.

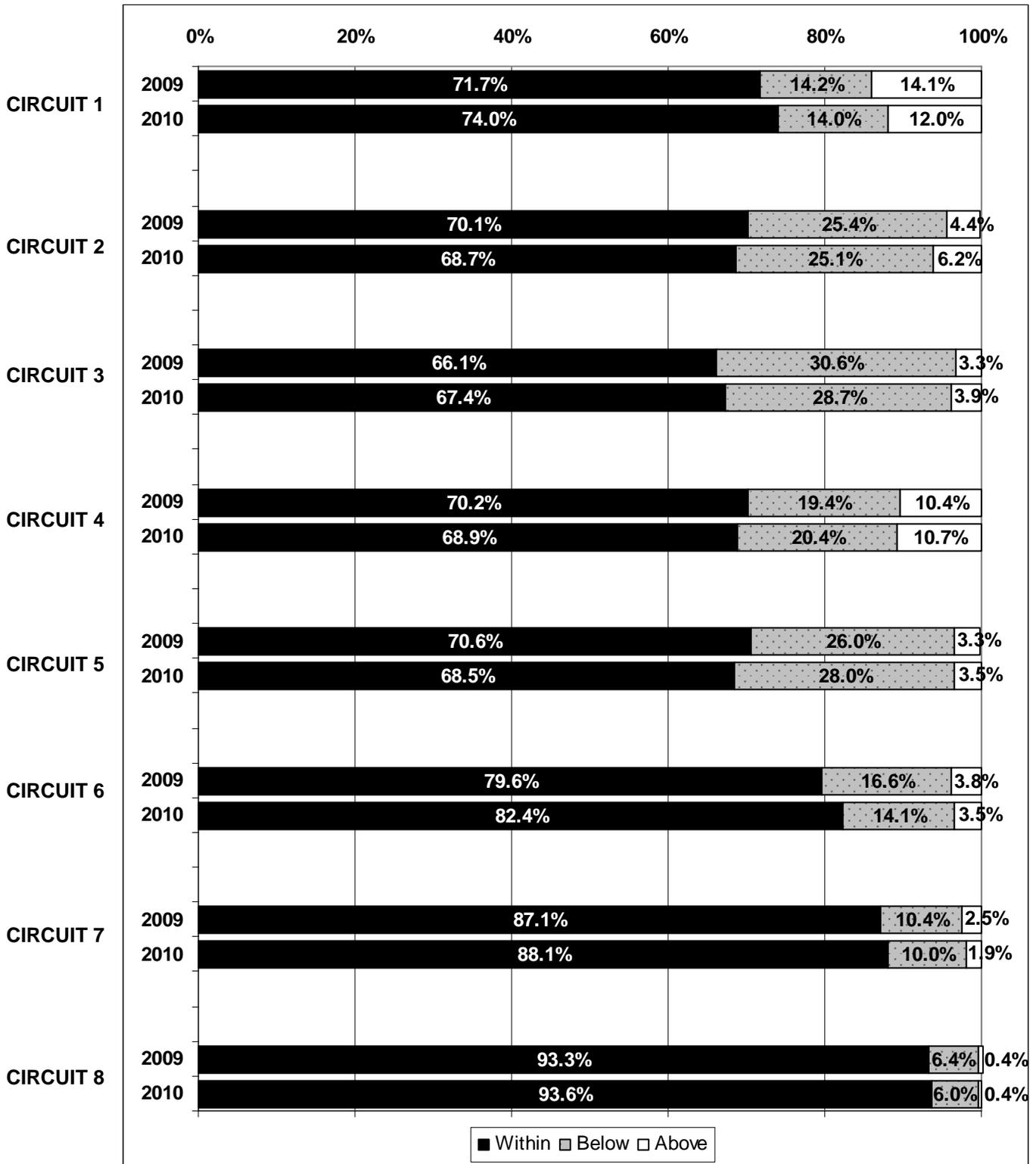
**Figure 9. Overall Sentencing Guidelines Compliance by Fiscal Year
(Single Count Convictions)**



Judicial Compliance Rates by Circuit

As shown in Figure 10, all eight circuits met the 65% compliance benchmark in fiscal year 2010. The circuit with the largest number of defendants, the Eighth Circuit, had the highest compliance rate (93.6%). Compliance was lowest in the Third Circuit (67.4%). The largest change in compliance rates occurred in the Sixth Circuit, where rates increased 2.8% from 79.6% in 2009 to 82.4% in 2010.

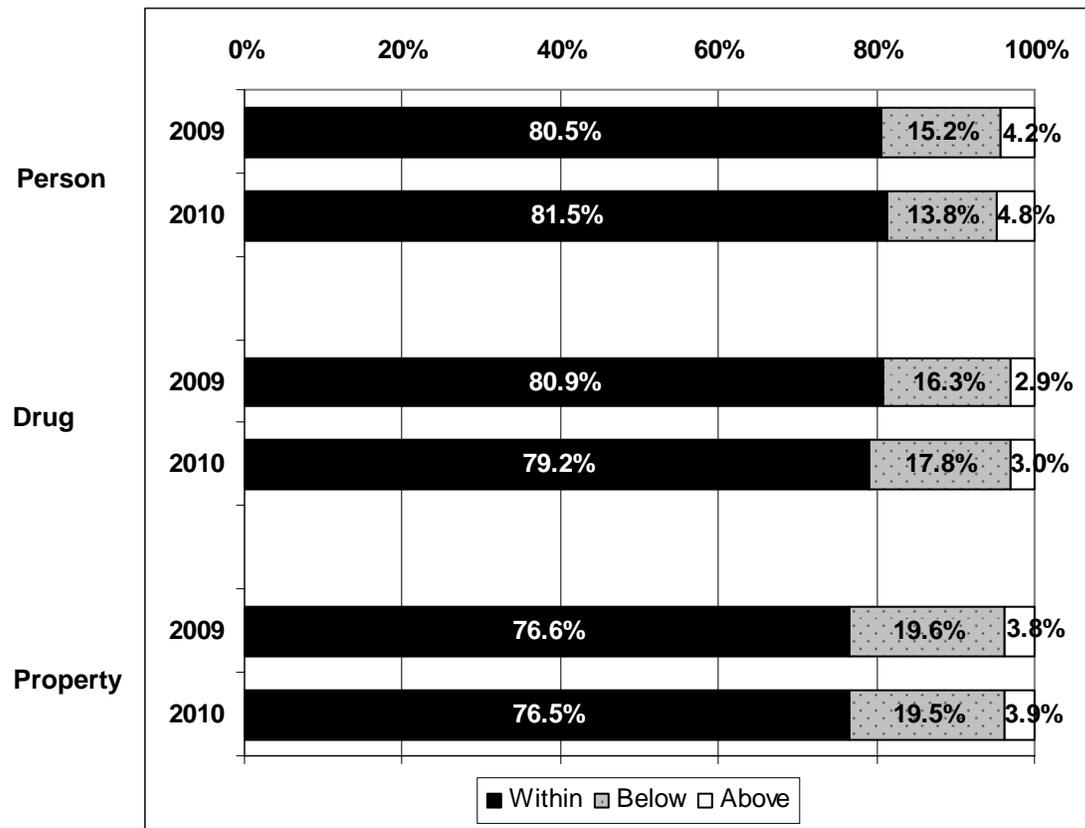
Figure 10. Sentencing Guidelines Compliance by Circuit and Fiscal Year



Judicial Compliance Rates by Crime Category

Figure 11 shows judicial compliance by crime category for fiscal years 2009 and 2010. Person offenses were the least likely to result in a departure from the guidelines in fiscal year 2010, although differences in compliance rates from one crime category to the next were negligible. The compliance rates for all three crime categories changed little from 2009 to 2010, 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

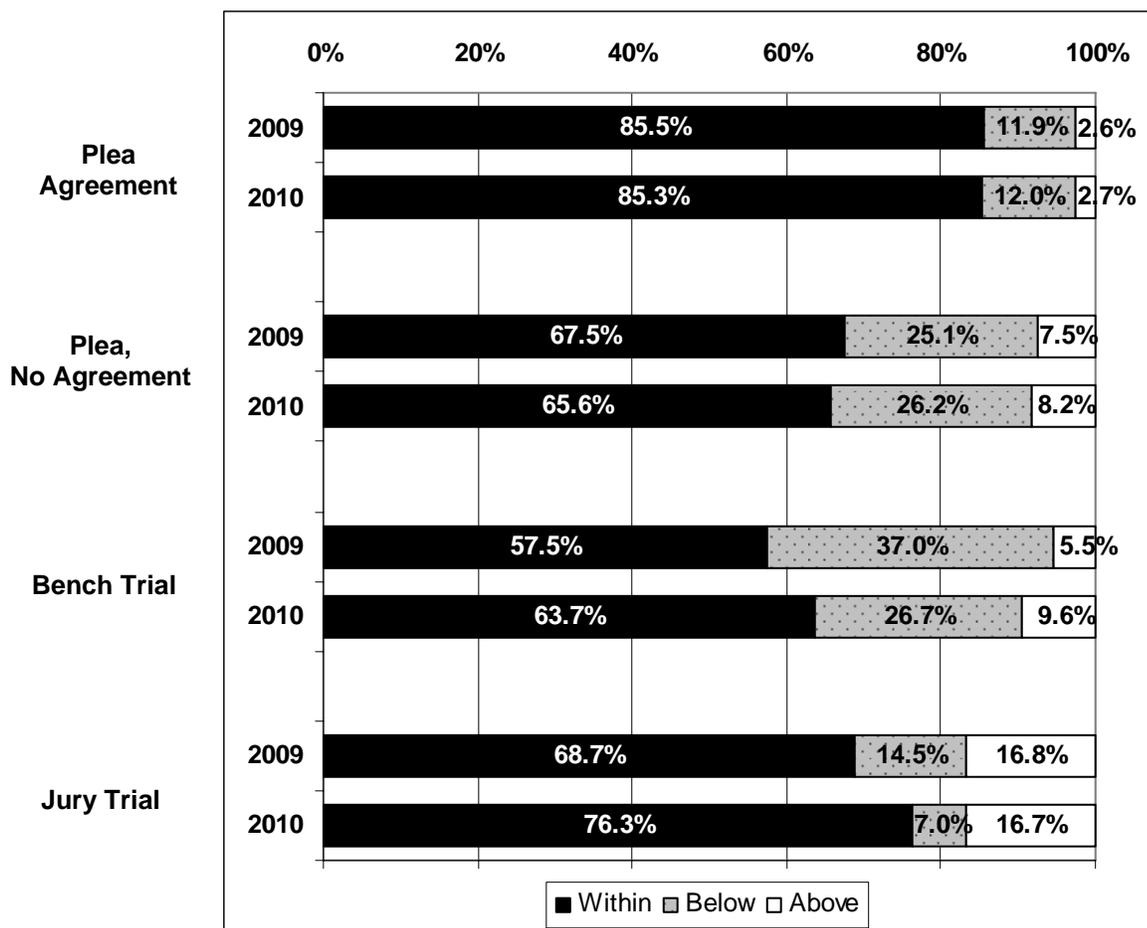


⁴ See Appendix C for sentencing guidelines compliance and average sentence for the five most common offenses in each crime category.

Judicial Compliance Rates by Type of Disposition

Figure 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). Plea agreements accounted for the highest percentage of compliant cases (85.3%) in fiscal year 2010. This is not surprising given that the plea agreement category includes ABA pleas, which as of July 2001, are defined as compliant. In contrast, cases resolved by a bench trial fell just short of the 65% compliance benchmark. Compliance rates were relatively stable over the past two fiscal years for cases adjudicated by a plea agreement as well as those adjudicated by a plea with no agreement, while notable increases in compliance were observed for cases adjudicated by a bench or jury trial. When departures occurred, they were more likely to be below the recommended guidelines for cases resolved by a plea agreement, plea with no agreement, or bench trial. In contrast, departures were more likely to be above the recommended guidelines for cases resolved by a jury trial.

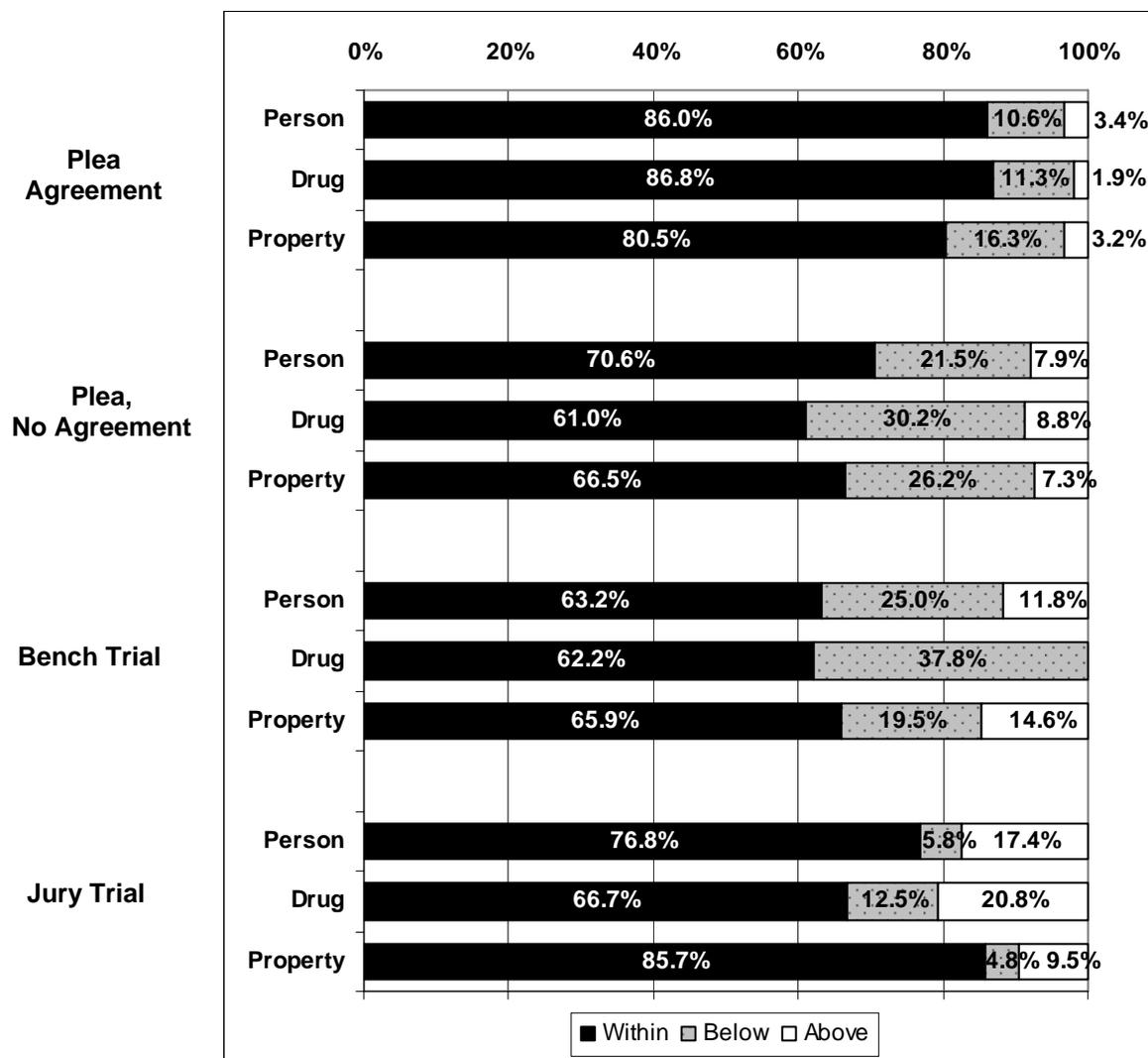
Figure 12. Sentencing Guidelines Compliance by Type of Disposition and Fiscal Year



Judicial Compliance Rates by Crime Category and Disposition

Compliance rates by crime category and disposition are displayed in Figure 13 for fiscal year 2010 and in Figure 14 for fiscal year 2009. 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 21 worksheets in fiscal year 2010 for single-count property offenses adjudicated by a jury trial.

Figure 13. Sentencing Guidelines Compliance by Crime Category and Disposition, 2010

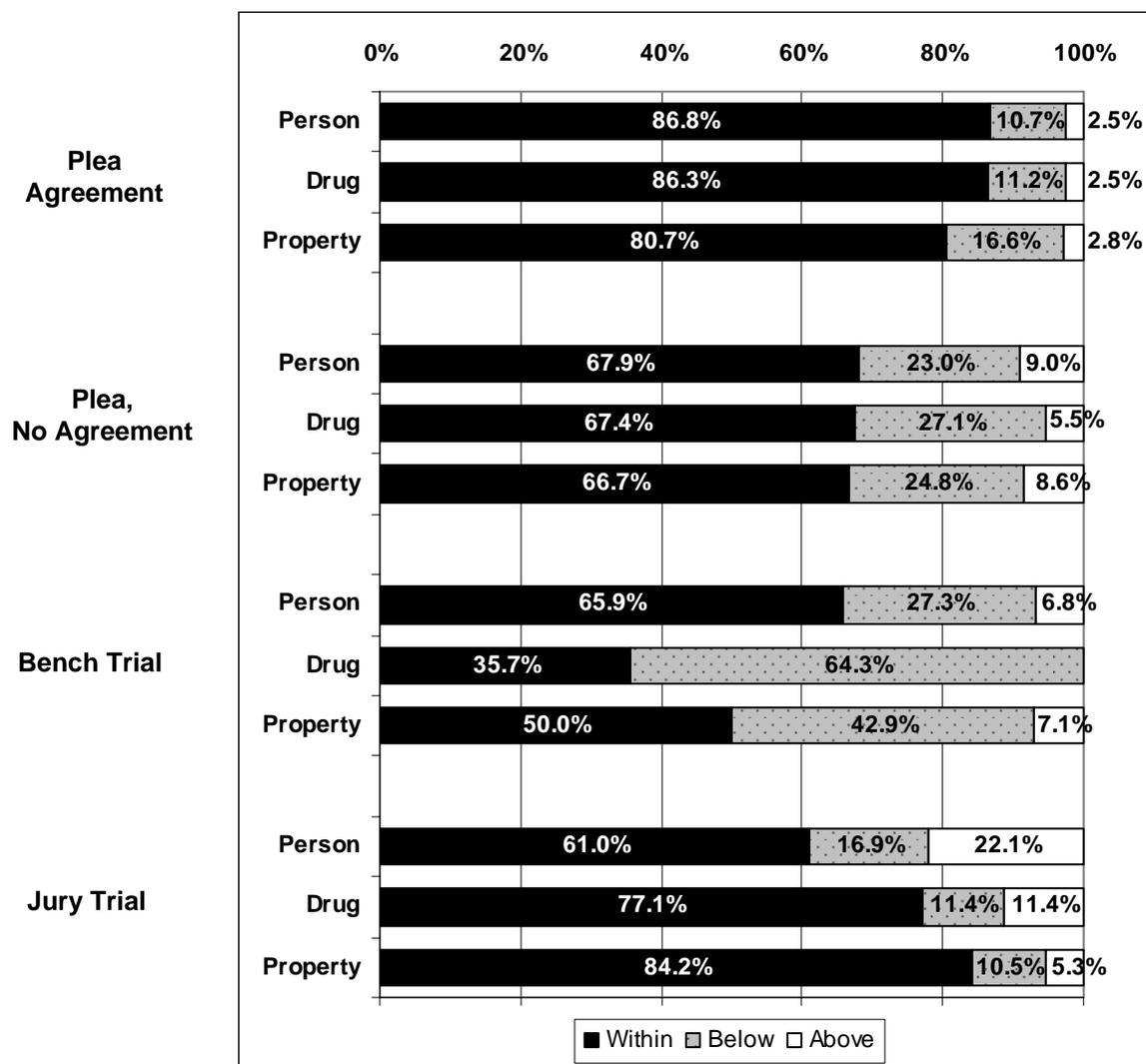


Looking first at the findings for 2010, the highest compliance rates were observed for drug and person offenses adjudicated by a plea agreement (86.8% and 86%, respectively) and property offenses adjudicated by a jury trial (85.7%). All but three compliance rates met the benchmark of 65%: drug offenses resolved by a plea with no agreement (61%) and drug and person offenses resolved by a bench trial (62.2%, and 63.2%, respectively). Downward departures

occurred more often than upward departures among these three categories of cases. Upward departures were most common among drug offenses disposed of by a jury trial (20.8%).

Similar to fiscal year 2010, Figure 14 shows that the highest compliance rates for fiscal year 2009 were observed for person and drug offenses adjudicated by a plea agreement (86.8% and 86.3%, respectively) and property offenses adjudicated by a jury trial (84.2%). The other compliance rates to meet the benchmark of 65% were those for property offenses resolved by a plea agreement (80.7%); drug offenses resolved by a jury trial (77.1%); person, drug, and property offenses resolved by a plea with no agreement (67.9%, 67.4%, and 66.7%, respectively); and person offenses resolved by a bench trial (65.9%). Drug offenses disposed of by a bench trial had the lowest compliance rate (35.7%), and all departures in this category were downward departures. Upward departures were most common among person offenses disposed of by a jury trial (22.1%).

Figure 14. Sentencing Guidelines Compliance by Crime Category and Disposition, 2009



A comparison of Figures 13 and 14 indicates that the compliance rate dropped from above the 65% benchmark in fiscal year 2009 to below the 65% benchmark in fiscal year 2010 for drug offenses resolved by a plea with no agreement and person offenses resolved by a bench trial. Conversely, compliance rose from below the 65% benchmark in 2009 to above the 65% benchmark in 2010 for property offenses adjudicated by a bench trial, as well as person offenses adjudicated 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 an accompanying numerical departure code (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 4 and 5 display the reasons given for departures from the guidelines in fiscal year 2010. The tables include all of the reasons listed on the reference card as well as the most commonly cited "other" reasons. Table 4 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 58.2% of downward departures, the reason(s) for departure was not provided. The most commonly cited reasons for downward departures were: 1) the parties reached a plea agreement that called for a reduced sentence; 2) recommendation of the State's Attorney or Division of Parole and Probation; and 3) offender's commitment to substance abuse treatment or other therapeutic program.

Table 4. Departure Reasons for Cases Below the Guidelines, Fiscal Year 2010^a

Mitigating Reasons	Percent of Departures Where Reason is Cited	Valid Percent^b
<i>No Departure Reason Given</i>	58.2%	---
The parties reached a plea agreement that called for a reduced sentence	19.3%	46.2%
Recommendation of State's Attorney or Division of Parole and Probation	14.7%	35.1%
Offender's commitment to substance abuse treatment or other therapeutic program	4.8%	11.6%
Offender's minor role in the offense	2.9%	7%
Offender had diminished capability for judgment	2.5%	6%
Offender's age/health	2.1%	5.1%
Offender made restorative efforts after the offense	1.8%	4.3%
Offender's prior criminal record not significant	1.5%	3.6%
Weak facts of the case	0.9%	2%
Request of victim	0.9%	2%
Victim's participation in the offense lessens the offender's culpability	0.4%	1%
Offender was influenced by coercion or duress	0.3%	0.7%
Other reason (not specified above)	7.1%	16.9%

^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 5 provides a rank order of the aggravating reasons judges provided for cases where the sentence resulted in an upward departure. The first row of the table shows that in 41.5% of upward 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) the level of harm was excessive; and 3) special circumstances of the victim.

Table 5. Departure Reasons for Cases Above the Guidelines, Fiscal Year 2010^a

Aggravating Reasons	Percent of Departures Where Reason is Cited	Valid Percent^b
<i>No Departure Reason Given</i>	41.5%	---
Recommendation of State's Attorney or Division of Parole and Probation	23.5%	40.2%
The level of harm was excessive	7.7%	13.2%
Special circumstances of the victim	7.4%	12.7%
Offender's major role in the offense	7.1%	12.2%
The vicious or heinous nature of the conduct	7.1%	12.2%
Offender's significant participation in major controlled substance offense	6.5%	11.1%
Offender exploited a position of trust	3.7%	6.3%
Offender's prior criminal record significant	2.8%	4.8%
Plea agreement	2.2%	3.7%
Offender committed a "white collar" offense	1.2%	2.1%
Other reason (not specified above)	14.2%	24.3%

^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 anticipation of 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 The available data on reconsidered sentences and economic loss for cases sentenced in fiscal year 2010 are summarized below.

Report on Adjustments from Reconsidered Sentences Involving Crimes of Violence

Table 6 reports the submissions of reconsidered sentences reported to the MSCCSP for crimes of violence (COV) as defined in §14-101 of the Criminal Law Article, Annotated Code of Maryland for fiscal year 2010 by circuit. Prior reports have included data for all reconsidered sentences reported to the MSCCSP. However, in September 2009 the MSCCSP clarified that guidelines worksheets for reconsiderations only need to be completed when there is an adjustment to an active sentence for COV offenses. Therefore, the figures on reconsiderations provided in the current report are limited to COV cases. The number of sentence reconsiderations for COV offenses reported to the MSCCSP for fiscal years 2009 and 2010 were provided in advance of this report to the circuit and county administrative judges. The

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)).

advance notice was provided so that the courts would have the opportunity to address any discrepancies regarding the number of reported cases.

Table 6 is based on reconsidered sentences for fifteen offenders and thirty-six offenses. This represents an increase over fiscal year 2009 when the MSCCSP received worksheets on reconsiderations for crimes of violence for ten offenders and twenty-three offenses. Handgun use in a felony or crime of violence [CR, §4-204] was the most common violent offense in reconsidered cases reported to the MSCCSP in fiscal year 2010.

Table 6. Case Reconsiderations for Crimes of Violence (CR, §14-101), Fiscal Year 2010^a

Circuit	Offense	# of Cases
FOURTH	Robbery	1
SIXTH	Handgun Use in Felony or Crime of Violence	1
	Kidnapping	2
	Murder, 2 nd Degree	1
	Carjacking, Armed	1
	Robbery with Dangerous Weapon	1
	Robbery	4
	Rape, 1 st Degree	1
	Rape, 1 st Degree, Attempted	1
	Sex Offense, 1 st Degree	1
SEVENTH	Assault, 1 st Degree	2
	Handgun Use in Felony or Crime of Violence	5
	Voluntary Manslaughter	1
	Murder, 1 st Degree	1
	Murder, 2 nd Degree	1
	Murder, 2 nd Degree, Attempted	2
	Robbery with Dangerous Weapon	3
	Robbery	1
EIGHTH	Assault, 1 st Degree	2
	Handgun Use in Felony or Crime of Violence	2
	Robbery with Dangerous Weapon	2

^a Table 6 is based on reconsidered sentences for 15 offenders and 36 offenses.

Economic Loss in Title 7 and Title 8 Crimes

In fiscal year 2010, 1,478 sentences for theft, fraud, and related crimes were reported to the MSCCSP. The amount of economic loss to the victim was recorded for only 375 (25.4%) of these cases. When reported, economic loss ranged in value from a minimum of no loss to a maximum of \$602,709. The average amount of loss was \$25,039. 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 or felony theft or theft scheme, \$500 or greater (CR, §7-104).

MSCCSP PLANNED ACTIVITIES FOR 2011

The work of the MSCCSP in 2011 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 likely be addressed in 2011.

In 2011, the MSCCSP will continue to provide sentencing guidelines education and training and will work with the judiciary to maintain a guidelines orientation program for all new circuit court appointees. The Commission will also continue to meet individually with circuit court county administrative judges to review sentencing guidelines data and obtain feedback on their experiences with the guidelines. Furthermore, the MSCCSP will identify two pilot jurisdictions to utilize the Maryland Automated Guidelines System (MAGS) starting in early 2011 and will develop a plan for statewide implementation of the automated system.

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 training for the MSCCSP staff and will review projections with the DPSCS to ensure accurate model specifications.

The Commission's Sentencing 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 Sentencing Guidelines Subcommittee will also continue to work on Phase I of the Commission's risk assessment review project and expects to make a recommendation to the full Commission regarding the potential utilization of a risk instrument at sentencing during the coming year.

The activities described above are just a few of the many steps that will be taken by the Commission in 2011 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 1.6)

MARYLAND SENTENCING GUIDELINES WORKSHEET				OFFENDER NAME - Last, First, Middle				SID#		BIRTHDATE		JURISDICTION			
PSI		DATE OF OFFENSE		DATE OF SENTENCING		DISPOSITION TYPE		REPRESENTATION		ETHNICITY		RACE			
<input type="checkbox"/> Yes	<input type="checkbox"/> No					ABA plea agreement Non-ABA plea agreement Plea, no agreement Court trial		Private Public Defender Court Appointed Self		Hispanic/Latino Origin Indigence Established		Black White Native Hawaiian/Pacific Islander American Indian/Alaskan Native Unidentifiable Asian Other			
AT THIS SENTENCING, NUMBER OF:		CRIMINAL OFFENSES		WORKSHEET # OF CRIMINAL EVENT #											
CONVICTED OFFENSE TITLE				I-VII		CJIS CODE		MD CODE, ART, & SECTION		STAT. MAX		MAND. MIN		CASE # / DOCKET #	
1 st Convicted Offense															
2 nd Convicted Offense															
3 rd Convicted Offense															
OFFENSE SCORE(S) - Offense Against a Person Only				OFFENDER SCORE				GUIDELINES RANGE				ACTUAL SENTENCE - Imposed, Suspended, Time Served, Probation, Restitution, Fine, Corrections Options Programs (Drug Treatment Court, Home Detention, Etc.)			
1 st Off				A. Relationship to CPS When Instant Offense Occurred				1 st Con. Off.				1 st Convicted Offense			
2 nd Off				B. Juvenile Delinquency				TO				For Theft, Fraud, and Related Offenses, please indicate: <input type="checkbox"/> Economic loss \$ <input type="checkbox"/> Restitution Requested Subsequent Offense Proven <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown Amount <input type="checkbox"/> Yes <input type="checkbox"/> No			
3 rd Off				C. Prior Adult Criminal Record											
4 th Off				D. Prior Adult Parole/Prob Violation											
5 th Off				OFFENSE SCORE(S)											
6 th Off				OFFENDER SCORE											
7 th Off				SENTENCE DEPARTURE INFORMATION											
8 th Off				If the actual sentence departs from the guidelines range, please indicate the Court's reason(s) using the numerical code(s) on the list of common departure factors in the manual, if applicable.											
9 th Off				Departure Code 9 or 18 (Please Explain):											
10 th Off				Victim Information											
11 th Off				Victim Unavailable											
12 th Off				Victim Notified Date											
13 th Off				Victim Present											
14 th Off				Written VIS											
15 th Off				Oral VIS											
16 th Off				No Contact with Victim											
17 th Off				CIBC Cost Imposed											
18 th Off				Overall Guidelines Range											
19 th Off				Multiple counts Only											
20 th Off				50% of Sentence Announced											
21 st Off				Was the offender sentenced to a Corrections Options program under Commission criteria?											
22 nd Off				Drug Court											
23 rd Off				Additional Information or Institutional/Parole Recommendation											
24 th Off				Parole Notification											
25 th Off				Worksheet Completed By											
26 th Off				Title											
27 th Off				Sentencing Judge (Please Print)											
28 th Off				Sentencing Judge's Signature											

5/2010 (1.6)

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

Appendix C:

Sentencing Guidelines Compliance and Average Sentence by Offense Type, Fiscal Year 2010 (Most Common Person, Drug, and Property Offenses)

Person Offenses	N	Guidelines Compliance			% Incarc.	Average Sentence Among Incarcerated	
		Within	Below	Above		Total Sentence	Total, Less Suspended
Assault, 2 nd Degree	911	84.7%	11.1%	4.2%	67.1%	5.1 years	1.3 years
Robbery	452	84.7%	11.7%	3.5%	90%	8.2 years	2.7 years
Robbery with Dangerous Weapon	245	76.3%	20.4%	3.3%	94.7%	11.8 years	4.6 years
Assault, 1 st Degree	223	72.6%	20.6%	6.7%	92.4%	12.4 years	5.1 years
Wear, Carry, Transport Handgun	165	93.3%	6.1%	.6%	79.4%	2.4 years	1 year
Drug Offenses							
Distribution Cocaine	1,120	74.6%	22.8%	2.6%	76.9%	7.7 years	2.8 years
Distribution Marijuana	686	86.2%	11.8%	2%	61.7%	3.2 years	.8 years
Distribution Heroin	667	88.7%	10.5%	.8%	74.5%	7.1 years	2.2 years
Possession Marijuana	256	91.8%	1.2%	7.1%	36.7%	.7 years	.3 years
Possession Cocaine	176	69.9%	24.4%	5.7%	77.3%	2.9 years	1.1 years
Property Offenses							
Theft or Theft Scheme, \$500 or Greater	372	78.2%	15.3%	6.5%	68%	6.4 years	2 years
Burglary, 1 st Degree	307	79.5%	19.9%	.7%	80.1%	7.9 years	2.6 years
Burglary, 2 nd Degree	184	75.5%	23.4%	1.1%	81.5%	7.5 years	3.1 years
Burglary, 4 th Degree	135	71.1%	21.5%	7.4%	65.2%	2.3 years	.6 years
Theft or Theft Scheme, Less Than \$500	120	72.5%	21.7%	5.8%	65.8%	1.2 years	.7 years

Appendix D:

Description of Types of Disposition

Disposition Type	Description
ABA Plea Agreement	The disposition resulted from a plea agreement that the court approved relating to a particular sentence, disposition, or other judicial action, and the agreement is binding on the court under Maryland Rule 4-243 (c).
Non-ABA Plea Agreement	The disposition resulted from a plea agreement reached by the parties but that was not approved by, and thus not binding on, the court.
Plea, No Agreement	The defendant 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 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).