

Maryland State Commission on Criminal Sentencing Policy

An Assessment of Racial Differences in Maryland Guidelines-Eligible Sentencing Events

July 2023

With December 19, 2023, Updates to:

Findings—Sentencing Trends and Sentencing Guidelines Compliance by Race—
Mandatory Minimum Offenses

Findings—Sentence Trends and Sentencing Guidelines Compliance by Race—
Sentence as a Percentage of the Guidelines Midpoint

Conclusions and Recommendations—Recommendations for Other State Agencies—
Complete a comprehensive analysis of the racial impact of mandatory minimum penalties

Appendices—Appendix B: Offenses That Carry Mandatory Minimum Sentences



MSCCSP

University of Maryland

4511 Knox Road, Suite 309, College Park, MD 20742

301.403.4165

msccsp@umd.edu

www.msccsp.org



TABLE OF CONTENTS

Executive Summary	1
Key Findings.....	2
Conclusions and Recommendations	3
Introduction	5
What This Report Addresses	5
What This Report Does Not Address	6
Background	7
About the MSCCSP	7
About the Sentencing Guidelines.....	7
Scope of the Sentencing Guidelines.....	8
Collection and Scope of the Sentencing Guidelines Data.....	8
Methodology.....	10
Data Records Utilized for the Report.....	10
Racial/Ethnic Categories	10
Sentencing Factors Considered.....	11
Findings	16
Guidelines-Eligible Sentencing Events by Race.....	16
Figure 1. Guidelines-Sentenced Individuals by Race.....	16
Figure 2. Race of Guidelines-Sentenced Individuals by Judicial Circuit	17
Criminal History, Offense, and Disposition Characteristics by Race.....	17
Figure 3. Mean Offender Score by Race.....	19
Figure 4. Offender Score Components by Race	20
Figure 5. Guidelines-Sentenced Individuals Who Scored a Major Prior Record Due to the Accumulation of Multiple Minor Offenses	22
Figure 6. Prior Adult Convictions by Race	23
Figure 7. Most Serious Prior Adult Conviction by Race.....	24
Figure 8. Offense Type by Race	25
Figure 9. Select Offense Categories by Race	26
Figure 10. Mean Offense Score for Person Offenses by Race	27
Figure 11. Offense Score Components for Person Offenses by Race	28



Figure 12. Drug Offense Seriousness Categories by Race	29
Figure 13. Property Offense Seriousness Categories by Race	30
Figure 14. Representation by Race	31
Figure 15. Disposition Type by Race.....	32
Sentencing Trends and Sentencing Guidelines Compliance by Race	32
Figure 16. Incarceration Rates by Race	33
Figure 17. Incarceration Rates for Select Offense Categories by Race	34
Figure 18. Median Non-Suspended Sentence Length by Race	35
Figure 19. Median Non-Suspended Sentence Length for Select Offense Categories by Race	36
Figure 20. Race of Individuals Sentenced for All Offenses Versus Offenses that Carry Mandatory Minimum (MM) Sentences	38
Figure 21. Race of Individuals Sentenced for Felony Firearms/Weapons Offenses that Carry Mandatory Minimum (MM) Sentences	39
Figure 22. Percentage of Individuals Who Received Active Life Sentences for Life- Eligible Offenses by Race.....	41
Figure 23. Sentencing Guidelines Compliance by Race.....	42
Figure 24. Sentencing Guidelines Compliance by Judicial Circuit and Race	43
Figure 25. Sentencing Guidelines Compliance by Offense Type and Race	44
Figure 26. Sentencing Guidelines Compliance for Select Offense Categories by Race	45
Figure 27. Sentencing Guidelines Compliance by Disposition Type and Race.....	46
Figure 28. Sentencing Guidelines Midpoint by Race.....	47
Figure 29. Median Value of the Sentence as a Percentage of the Guidelines Range Midpoint by Race	49
Figure 30. Median Value of the Sentence as a Percentage of the Guidelines Range Midpoint for Select Offense Categories by Race	50
Figure 31. Median Value of the Sentence as a Percentage of the Guidelines Range Midpoint for Firearms/Weapons Offenses by Race.....	51
Conclusion and Recommendations.....	52
Recommended Actions for the MSCCSP	53
Recommendations for Other State Agencies and Local Entities	54
References.....	57



Appendices..... 59

Appendix A: Maryland Sentencing Guidelines Worksheet..... 60

Appendix B: Offenses that Carry Mandatory Minimum Sentences..... 61



EXECUTIVE SUMMARY

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP or Commission) was created by the Maryland General Assembly in 1999 with the goal that sentencing should be fair and proportional and that sentencing policies should reduce unwarranted disparity, including any racial disparity, in sentences for individuals who have committed similar crimes and have similar criminal histories. Maryland's voluntary sentencing guidelines are intended to limit unwarranted disparity in sentencing in the State's circuit courts by providing a common framework for judges whereby individuals with similar criminal histories who are convicted of similar offenses are treated alike. The guidelines systematically account for core, objective factors considered by judges in making sentencing decisions by identifying and assigning weights to those factors. In doing so, the guidelines recommend whether to incarcerate a convicted individual and if so, provide a recommended sentence range based largely on the available data for how Maryland circuit court judges have sentenced similar convictions.

Recognizing the importance of studying racial disparities in the criminal justice system, the MSCCSP has endeavored to analyze criminal sentencing using existing sentencing guidelines data. Compared to the general population in Maryland, Black individuals are overrepresented among guidelines-sentenced individuals (see Figure 1). It is important to recognize that differences in the racial composition of individuals at sentencing are present *before* sentencing. In other words, arrest practices, charging decisions, and pre-sentence detention significantly impact racial differences before any individual steps into a courtroom for sentencing. While these factors are outside of the scope of the sentencing judge and the Sentencing Commission, the MSCCSP in 2020 initiated a series of analyses to examine the components of the sentencing guidelines to assess whether racial differences are exacerbated at sentencing. Two years later, during the February 2022 review of the MSCCSP's fiscal year 2023 budget, the Maryland Department of Legislative Services (DLS) recommended that the MSCCSP prepare a report addressing the extent to which Maryland sentences are influenced by racial bias.

Accordingly, this report is the culmination of the MSCCSP's analysis of race and sentencing which began in 2020 and its response to the DLS recommendation. It provides a descriptive analysis of racial and ethnic differences in sentencing for guidelines-eligible sentencing events in Maryland. The analyses reported here utilize data records for sentencing guidelines worksheets completed for sentencing events in calendar year 2018 through calendar year 2020 (N=27,148 sentencing events). The worksheet is the mechanism used to calculate the recommended sentence outcome, and it collects information on demographic characteristics, criminal history, offense characteristics, the role of the victim and their rights at sentencing, recommended sentence range, type of disposition, sentence, compliance with the sentencing guidelines, and departure reasons (if applicable).

When reviewing the report, it is important to note that guidelines-eligible sentencing events represent a subset of cases prosecuted in Maryland courts. The guidelines were designed to apply to incarcerable offenses for which the circuit court has original jurisdiction. As such, cases



originating in circuit courts account for most guidelines-eligible cases. Among the cases excluded from guidelines coverage are all cases prosecuted in the District Court.

Key Findings

The report's findings detail the race and ethnicity of guidelines individuals sentenced in Maryland circuit courts both statewide and by judicial circuit during calendar years 2018 through 2020. Additionally, the findings summarize variation in sentence-related factors, sentence trends, and sentencing guidelines compliance by race and ethnicity. The racial/ethnic categories for this report are *Black*, *White*, *Hispanic*, and *Other*.¹

Guidelines-Sentenced Individuals

- In calendar years 2018 through 2020, the majority (63.4%) of guidelines-sentenced individuals were Black. In comparison, 29% of sentenced individuals were White, 6.2% were Hispanic, and 1.4% were of an Other race.
- Relative to the other judicial circuits, the 8th Circuit accounted for the largest percentage of Black guidelines-sentenced individuals (90.3%), while the 6th Circuit accounted for the largest percentage of Hispanic individuals (18.2%). Guidelines-eligible sentencing events in the 2nd Circuit were comprised of the largest percentage of White individuals (60.9%) relative to other judicial circuits, though the total number of sentencing events in the 2nd Circuit was comparatively small.

Criminal History, Offense, and Disposition Characteristics

- Black guidelines-sentenced individuals were more likely than sentenced individuals of all other race categories to have serious prior criminal records (i.e., higher offender scores) and less likely to have no prior criminal involvement.
- Supplemental data suggest that the higher offender scores observed among Black guidelines-sentenced individuals were due to their accumulation of a greater number of prior serious convictions than Hispanic, White, or Other race individuals.
- When considering the seriousness of the offenses in the guidelines-eligible sentencing event, Black and Hispanic individuals were generally sentenced for more serious offenses than White and Other race individuals.
- Black individuals were more than twice as likely as individuals of all other race categories to be sentenced for person offenses involving the presence of a firearm. Further, Black and Hispanic individuals were more likely than White or Other race individuals to be sentenced for firearms/weapons offenses that carry mandatory minimum penalties.

¹ For a full explanation of the racial/ethnic categories, see pages 10-11.



- Disposition types were similar across races, though sentencing events involving Black, Hispanic, and Other race individuals were more likely than sentencing events involving White individuals to be disposed of via an ABA plea agreement.

Sentencing Trends and Sentencing Guidelines Compliance

- Black and Hispanic guidelines-sentenced individuals were more likely than White and Other race individuals to be incarcerated and to be incarcerated for longer periods of time.
- Some of these incarceration differences may be attributed to the differences in criminal history and offense severity noted above. Some of the differences may be attributed to the mandatory minimum penalties that apply to certain firearms/weapons offenses. It is important to note that when sentencing an individual for an offense that carries a mandatory minimum sentence, the court typically has no discretion and must impose the required minimum period of confinement.
- When individuals' criminal history and offense severity—two factors considered by judges relevant to the sentencing decision—were accounted for, differences in sentences between races were generally reduced, though not eliminated.
- This reduction was evidenced by findings of similar sentencing guidelines compliance rates and similar median sentences as a percentage of the guidelines midpoint across races, with the exception being notably higher values for the median sentence as a percentage of the guidelines midpoint among Hispanic individuals relative to those of other race categories.

Conclusions and Recommendations

The sentencing guidelines in Maryland were designed to reduce disparities, including racial disparities, by recommending sentence lengths based on objective factors considered relevant by judges to the sentencing decision. In this regard, the Maryland sentencing guidelines generally appear to be achieving their purpose. The observed differences in sentences between racial categories in calendar years 2018 through 2020 were largely explained by the seriousness of the convicted offense and the length and severity of the prior criminal record.

That said, the ability of the current research to speak to disparities in sentencing is limited by two primary factors. First, the analyses presented are limited to sentencing data and do not address criminal justice system decisions occurring prior to or following the sentencing decision. The disproportionate racial composition of sentenced individuals is present before sentencing. In other words, societal factors, arrest practices, charging decisions, pre-sentence detention decisions, and other additional factors impact racial and ethnic differences before an individual is sentenced. Second, the report analyses are limited to circuit court sentences for guidelines-eligible cases. The analyses do not address all criminal sentencings in Maryland, as the data do not include District Court sentences or the subset of circuit court sentences that are not guidelines-eligible.



The MSCCSP recommends the following future actions for the MSCCSP and for other State agencies and local entities.

Recommended Actions for the MSCCSP

- Analyze the impact of the July 1, 2022, revisions to the sentencing matrices for drug and property offenses after sufficient data have been collected.
- Educate prosecutors, defense attorneys, judges, court staff, and Parole and Probation agents about guidelines rules for scoring prior juvenile delinquency and prior adult criminal records that involve an adjudication that is based on an act that is no longer criminal.
- Conduct a study to assess whether the offender score component of the sentencing guidelines may be amended to reduce previously existing racial and ethnic differences.
- Review the feasibility, advantages, and disadvantages of amending the Maryland Automated Guidelines System (MAGS) to add a tool to assist with the calculation of the adult prior criminal record.
- Examine whether disparities exist in the utilization of corrections options and other alternatives to incarceration.

Recommendations for Other State Agencies and Local Entities

- Fund a study to examine the impact of race at multiple points in the criminal justice system.
- Complete a comprehensive analysis of the racial impact of mandatory minimum penalties.
- Complete an analysis of the utilization of pre-sentence detention and assess how pre-sentence detention varies by race.
- Further explore whether there are unique factors influencing sentencing decisions for Hispanic individuals.
- Develop a unified resource for the Judiciary and other justice partners to help identify appropriate alternatives to incarceration.



INTRODUCTION

One of the primary goals of the Maryland State Commission on Criminal Sentencing Policy (MSCCSP or Commission), as provided in its statutory statement of intent (Criminal Procedure Article (CP), § 6-202), is that sentencing should be fair and proportional and that sentencing policies should reduce unwarranted disparity, including any racial disparity, in sentences for individuals who have committed similar crimes and have similar criminal histories. This report is a descriptive analysis that examines data collected for guidelines-eligible sentencings in Maryland with a focus on racial and ethnic differences at sentencing. Throughout the nation, minorities, particularly Black individuals, are overrepresented in the criminal justice system (Sabol and Johnson, 2022; Carson, 2021; Nellis, 2021). Maryland is not immune to this trend.

In 2020, 29% of Maryland's population identified as Black (U.S. Census Bureau, 2020). Between 2018 through 2020, the period covered by this report, more than 63% of guidelines-sentenced individuals were Black. During this reporting period, Black and Hispanic individuals generally received more stringent criminal sentences in Maryland, including higher incarceration rates and longer sentences, on average, in comparison to White sentenced individuals. The observed differences in sentences were driven primarily by the seriousness of the convicted offense and the length of the prior criminal record. Specifically, Black and Hispanic individuals sentenced under the Maryland sentencing guidelines were convicted of more serious criminal offenses based on the statutory maximum penalty and corresponding offense seriousness category than their White counterparts. Additionally, Black individuals sentenced under the Maryland sentencing guidelines had more extensive and more serious prior criminal histories. Accordingly, minority sentenced individuals were subject to more stringent recommendations via the sentencing guidelines and received more severe sentences.

The sentencing guidelines were designed to reduce the impact of unwarranted disparities by providing a common framework for judges whereby individuals with similar criminal histories who are convicted of similar offenses are treated alike. It is encouraging that when the objective factors of the sentencing guidelines are accounted for, the observed differences in sentences by race are substantially reduced. For example, the overall guidelines compliance rates show similar rates of within, below, and above guidelines sentences for all racial groups.

What This Report Addresses

This report provides descriptive analyses of sentences, by race and ethnicity, in Maryland's circuit courts for individuals who are sentenced under the sentencing guidelines framework (i.e., guidelines-eligible sentences). Specifically, the report describes components of the Maryland sentencing guidelines, as well as other offense, offender, and sentence related factors, by race and ethnicity. The report highlights differences that exist by race and ethnicity and provides information to help guide future work to improve racial justice.



What This Report Does Not Address

This report is limited in its ability to assess racial disparities in sentencing for two reasons. First, the data cannot be used to provide a causal link between racial bias and sentencing decisions. The analyses presented in this report are largely limited to data collected by the MSCCSP and cannot speak to the many additional factors that impact sentencing decisions that fall outside of the scope of the sentencing judge, such as decisions made before or after sentencing. As noted by the National Academies of Sciences (National Academies of Sciences, Engineering, and Medicine, 2022), racial inequality in the criminal justice system reflects cumulative disadvantage related to various stages of criminal processing, including police stops, arrest, charging, incarceration, and community supervision. Second, this report analyzes only the sentencing data maintained by the MSCCSP, which comprise a subset of sentences in Maryland. Specifically, the MSCCSP's data do not include District Court sentences, nor the subset of circuit court sentences that are not guidelines-eligible. It is possible that racial differences observed in this report may be the result of racial biases or other factors outside of the control of the sentencing judge, but this report cannot speak to these factors because of the limitations noted above.



BACKGROUND

About the MSCCSP

The Maryland General Assembly created the MSCCSP in 1999 as an independent agency to support fair and proportional sentencing policy and to monitor the State's voluntary sentencing guidelines for criminal cases sentenced in the circuit courts. The Commission consists of 19 diverse members, including members of the Judiciary, criminal justice practitioners, members of the Senate of Maryland and the House of Delegates, and representatives of the public. Commission staff positions currently provide for five full-time staff members and one part-time staff member.

The MSCCSP is responsible for monitoring judicial compliance with the guidelines and adopting, as necessary, changes to the guidelines consistent with the sentencing practices of Maryland circuit court judges. To fulfill these responsibilities, the MSCCSP also collects sentencing guidelines data, maintains the sentencing guidelines database, and conducts training and orientation for criminal justice personnel.

About the Sentencing Guidelines

The sentencing guidelines are a tool to encourage proportional, fair, and just sentences. The guidelines systematically account for two primary factors considered by judges: offense severity and criminal history. The guidelines identify and assign weights to core, objective factors, allowing judges to consistently assign the same value as their colleagues around the State for each of these factors. Accordingly, the guidelines promote consistent and equitable sentencing practices whereby individuals with similar criminal histories who are convicted of similar offenses are treated alike.

The Maryland sentencing guidelines are voluntary, meaning that judges may, at their discretion, depart from the guidelines. The Maryland sentencing guidelines are also primarily descriptive. As such, the guidelines are not intended to tell judges how they should sentence. Rather, they are informed by data, and they illustrate to judges how their colleagues are sentencing, on average, for a typical case. The descriptive nature of the guidelines also means they are not static. Instead, they are dynamic and may be amended when the data indicate that sentences are not consistent with the recommended ranges. CP, § 6-216 indicates that circuit court judges shall consider the guidelines at sentencing, but judges retain the option to sentence above or below the guidelines. If a judge chooses to depart from the sentencing guidelines, the Code of Maryland Regulations (COMAR) 14.22.01.05A states that the judge shall document the reason or reasons for imposing a sentence outside of the recommended guidelines range.

The sentencing guidelines cover three broad categories of offenses: person, drug, and property. The guidelines recommend whether to incarcerate a convicted individual and if so, provide a recommended sentence range based largely on the available data for how Maryland circuit



court judges have sentenced similar convictions. The guidelines sentence range represents only non-suspended time. The sentencing guidelines recommendations are provided in the form of three sentencing matrices—one matrix for person offenses, one matrix for drug offenses, and one matrix for property offenses. The grid cell at the intersection of an individual's offender score and offense seriousness category (for drug and property offenses) or offense score (for person offenses) determines the sentence recommendation. The offender score is a measure of the individual's criminal history, determined by whether the individual was in the criminal justice system at the time the offense was committed (i.e., on parole, probation, or temporary release from incarceration, such as work release), has a juvenile record or prior criminal record as an adult, and has any prior adult parole or probation violations. The offense seriousness category is an offense ranking ranging from I to VII, where I designates the most serious criminal offenses and VII designates the least serious criminal offenses. For person offenses, the seriousness category, the physical or psychological injury to the victim, the presence of a weapon, and any special vulnerability of the victim (such as being under 11 years old, 65 years or older, or physically or cognitively impaired) together determine the offense score.

Scope of the Sentencing Guidelines

The guidelines were designed to apply to incarcerable offenses for which the circuit court has original jurisdiction. As such, the sentencing guidelines cover a subset of cases prosecuted in Maryland courts. Cases originating in circuit courts account for most guidelines-eligible cases. Also included in guidelines coverage are prayers for jury trials from the District Court and criminal appeals from the District Court, provided that a pre-sentence investigation (PSI) was ordered. This is because prayers for jury trials and appeals where a PSI was ordered generally involve more serious and/or incarcerable offenses. Finally, reconsiderations/modifications and three-judge panel reviews involving a crime of violence (as defined in Criminal Law Article (CR), § 14-101) are guidelines-eligible cases if an adjustment was made to the individual's active sentence.

Excluded from guidelines coverage are all cases prosecuted in the District Court and some circuit court cases. Ineligible circuit court cases include prayers for jury trials and appeals without a PSI, as well as most sentence modifications, including modifications in response to a violation of probation. Offenses merged at sentencing, violations of public local laws and municipal ordinances, offenses that carry no possible penalty of incarceration, criminal nonsupport, and criminal contempt are excluded from guidelines coverage. Lastly, the sentencing guidelines do not apply to cases adjudicated in a juvenile court or to cases in which the individual was found not criminally responsible (NCR).

Collection and Scope of the Sentencing Guidelines Data

The sentencing guidelines data are collected via the Maryland sentencing guidelines worksheet (see Appendix A for a copy of the worksheet). The worksheet is the tool used to calculate the sentencing guidelines which determine the recommended sentence outcome, and the worksheet is also used to record key data about the sentencing event. The worksheet collects



information on demographic characteristics, criminal history, offense characteristics, the role of the victim and their rights at sentencing, recommended sentence range, type of disposition, sentence, compliance with the sentencing guidelines, and departure reasons (if applicable). The sentencing guidelines worksheet originated as a paper form and transitioned to a predominantly electronic form, completed and submitted by practitioners using the Maryland Automated Guidelines System (MAGS). MAGS was gradually deployed by jurisdiction starting in 2012. Effective October 1, 2019, MAGS is utilized in all 24 Maryland jurisdictions.

Sentencing guidelines worksheets are typically initiated by the State's Attorney's Office or the Division of Parole and Probation (in instances where a PSI was ordered). Prosecutors and Parole and Probation agents record the sentencing guidelines information up to the point of sentence information. Sentencing judges or their designees complete initiated worksheets by providing necessary sentence information and the reason(s) for departure from the recommended guidelines, if applicable. The accuracy and completeness of the data are directly related to the quality of the information entered in each sentencing guidelines worksheet.

It is important to note that while the data points collected on the sentencing guidelines worksheet are numerous, they are limited to the sentencing stage of the criminal justice system. Data points preceding the sentencing stage, such as arrest and charging decisions, are not included. Similarly, data points following the sentencing stage, such as the amount of the sentence served, are not included. The specific variables examined in the current analysis of race and sentencing are discussed in greater detail below.



METHODOLOGY

Data Records Utilized for the Report

This report utilizes data records for sentencing guidelines worksheets received for sentencing events in calendar years (CY) 2018 through 2020 (N=27,148 sentencing events).² A sentencing event is defined as a sentencing disposition or hearing for an individual conducted in front of one judge on the same day. A sentencing event may consist of a single offense or multiple offenses. Offense-specific analyses included in this report refer to the most serious offense in a sentencing event, unless otherwise specified.³

The period CY 2018 through 2020 was selected for the report in large part because the MSCCSP had, at the time of the recommendation for this study, already initiated an examination of race and sentencing using worksheet data for CY 2018 through 2020. Additionally, as part of that examination, missing race and ethnicity data were supplemented with race and ethnicity data provided by the Judiciary's Administrative Office of the Courts (AOC). With this supplemental data, the percentage of sentencing events missing demographic data decreased from 13.4% to 0.8% missing race and from 18.7% to 18.3% missing ethnicity.⁴

Racial/Ethnic Categories

The racial/ethnic categories for this report are *Black*, *White*, *Hispanic*, and *Other*. Consistent with the requirements specified in State Government Article (SG), § 10-603, the sentencing guidelines worksheet provides for the following racial categories: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or other Pacific Islander, and White. Prior to July 1, 2019, racial categories on the worksheet were mutually exclusive, permitting selection of no more than a single category. Effective July 1, 2019, the sentencing guidelines worksheet permits multiracial responses. Additionally, per the requirements specified in SG, § 10-603, the worksheet includes a separate question about whether the individual is of Hispanic or Latino origin.⁵

² Unless otherwise specified, data records for sentence reconsiderations and three-judge panel reviews are excluded from the present analyses. Approximately, 0.8% of sentencing events in calendar years 2018 through 2020 involved a sentence reconsideration or a three-judge panel review.

³ In multiple offense sentencing events, the most serious offense is defined as the offense with the longest non-suspended sentence length. If multiple offenses within a sentencing event have the same non-suspended sentence length, then the most serious offense is defined as the offense with the lowest (most serious) seriousness category classification, followed by the highest statutory maximum penalty, followed by felony/misdemeanor classification.

⁴ These percentages are based on data for all sentencing events (N=27,527), including reconsiderations and three-judge panel reviews. While the supplemental data received from the AOC eliminated most of the missing data for race, ethnicity remained missing for 18.3% of sentencing events. Effective April 1, 2021, race and ethnicity are required fields in MAGS.

⁵ The Hispanic population is likely underreported in the sentencing guidelines data analyzed for this report for two reasons. First, ethnicity is missing in 18.3% of guidelines-eligible sentencings in CY 2018-2020. Second, the racial information recorded on the sentencing guidelines worksheet is most often taken from the arresting officer's



For the purposes of this report, the racial categories American Indian/Alaska Native, Asian, and Native Hawaiian/other Pacific Islander are combined in a single category labeled *Other*. This is due to the small number of cases in each of these racial groups. In addition, because there are typically fewer than 1% of individuals with multiple racial categories indicated, they too are included in the category labeled *Other*. Lastly, individuals identified as being of Hispanic or Latino origin in the separate ethnicity question are labeled *Hispanic* regardless of the racial category selected. This decision was made because during the period covered by the report, the race field was often left blank when the Hispanic/Latino field was marked *Yes*, indicating that some respondents did not distinguish between race and ethnicity.

For simplicity, the term *race* is used throughout the report to refer to the racial/ethnic categories described above (i.e., *Black*, *White*, *Hispanic*, and *Other*).

Sentencing Factors Considered

The present analyses describe the distribution of guidelines-eligible sentencing events by the sentenced individual's race. The sentencing event is the typical unit of analysis, and a single individual may be involved in multiple sentencing events. The analyses also examine whether various sentencing factors differ depending on an individual's race. The key sentencing factors considered by race are identified and defined below.

Judicial circuit: The judicial circuit is an indicator of the geographic location of the circuit court in which the individual was sentenced. Maryland circuit courts are grouped in eight judicial circuits.

- 1st Circuit – Dorchester, Somerset, Wicomico, Worcester
- 2nd Circuit – Caroline, Cecil, Kent, Queen Anne's, Talbot
- 3rd Circuit – Baltimore County, Harford
- 4th Circuit – Allegany, Garrett, Washington
- 5th Circuit – Anne Arundel, Carroll, Howard
- 6th Circuit – Frederick, Montgomery
- 7th Circuit – Calvert, Charles, Prince George's, St. Mary's
- 8th Circuit – Baltimore City

statement of charges. A measure of ethnicity is not provided in the statement of charges and is likely recorded on the sentencing guidelines worksheet by the prosecutor (or Parole and Probation agent if a PSI is ordered) based on the sentenced individual's surname or information gathered while investigating the case. Given the likelihood that the Hispanic population is underreported in the guidelines-eligible sentence data, the corresponding findings regarding the Hispanic population should be interpreted with caution.



Offender score: The offender score is a summary score ranging from 0 to 9 measuring an individual's prior criminal history and is used to calculate the sentencing guidelines for all offense types (person, drug, and property). The offender score is comprised of the following four components.

- A. Relationship to the criminal justice system when the instant offense occurred
 - 0 = None or pending cases
 - 1 = Court or other criminal justice supervision
- B. Juvenile delinquency
 - 0 = 23 years or older or 0 findings of a delinquent act within 5 years of the date of offense
 - 1 = Under 23 years old and: 1 or 2 findings of a delinquent act within 5 years of the date of offense
 - 2 = Under 23 years old and: 3 or more findings of a delinquent act within 5 years of the date of the offense
- C. Prior adult criminal record
 - 0 = None
 - 1 = Minor
 - 3 = Moderate
 - 5 = Major
- D. Prior adult parole/probation violation
 - 0 = No
 - 1 = Yes

In addition to considering the total offender score and each of the four components, the analyses examine how often the accumulation of multiple minor offenses results in a major criminal record classification, as well as the quantity and types of offenses that make up sentenced individuals' prior criminal records.

Most serious offense: Offense-specific analyses in this report refer to the most serious offense in the sentencing event. In multiple offense sentencing events, the most serious offense is defined as the offense with the longest non-suspended sentence length. If multiple offenses within a sentencing event have the same non-suspended sentence length, then the most serious offense is defined as the offense with the lowest (most serious) seriousness category classification, followed by the highest statutory maximum penalty and felony/misdemeanor classification.

Offense type: Sentencing guidelines offenses are categorized into one of three offense types – *person, drug, or property* – based on the substantive nature of the prohibited act. This report also examines several categories of offenses included under these broader offense types, including crimes of violence and felony firearms/weapons offenses (both of which are classified as person offenses) and felony narcotics offenses (which are classified as drug offenses).



Offense score (for person offenses): The offense score is a summary score ranging from 1 to 15 measuring the seriousness of a person offense and calculated for use in the person offense sentencing matrix. The offense score is comprised of the following four components.

- A. Offense seriousness category
 - 1 = V – VII
 - 3 = IV
 - 5 = III
 - 8 = II
 - 10 = I
- B. Victim injury
 - 0 = No injury
 - 1 = Injury, non-permanent
 - 2 = Permanent injury or death
- C. Weapon presence
 - 0 = No weapon
 - 1 = Weapon other than firearm
 - 2 = Firearm or explosive
- D. Special vulnerability of victim
 - 0 = No
 - 1 = Yes

Offense seriousness category (for drug and property offenses): The offense seriousness category is an offense ranking ranging from I to VII, where I designates the most serious criminal offenses and VII designates the least serious criminal offenses. The Commission assigns seriousness category classifications by looking at offenses with similar statutory maximum penalties, offense types, and felony/misdemeanor classifications.

Representation: Representation refers to the type of legal representation received and includes private attorney, public defender, court appointed, and pro-se litigants (or self-represented).

Disposition type: The disposition type captures how the sentencing event was resolved. The worksheet provides five disposition type categories.

- ABA Plea Agreement – The disposition resulted from a plea agreement negotiated by the State and the defense 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).⁶

⁶ The name and definition of a guidelines-compliant plea agreement was revised effective April 1, 2021. Prior to April 1, 2021, a guidelines-compliant plea was termed an *ABA plea agreement*. Effective April 1, 2021, a guidelines-compliant plea is termed an *MSCCSP binding plea agreement* and defined as follows: A plea agreement presented to the court in agreement by an attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, that a court has approved relating to a particular sentence and disposition. An MSCCSP binding plea agreement means an agreement to a specific amount of active time (if any), not merely a sentence cap or range. The court has the discretion to accept or reject the plea. The agreement is binding on the court under Maryland Rule 4-243(c) if the court accepts the plea.



- Other Plea Agreement – The disposition resulted from a plea agreement reached by the parties but not approved by, and thus not binding on, the court.
- Plea, No Agreement – The defendant pleaded guilty without any agreement from the prosecutor or judge to perform in a particular way.
- Bench Trial – The disposition resulted from a trial without a jury in which the judge decided the factual questions.
- Jury Trial – The disposition resulted from a trial in which the jury decided the factual questions.

It is important to note that 47.3% of sentences during calendar years 2018 through 2020 were the result of an ABA plea agreement.

Incarceration rates and sentence length: The sentencing guidelines worksheet captures four key sentence components: credit for time served prior to the sentence date, jail or prison time to be served following the sentence date, suspended sentence, and time to be served on home detention. In addition to considering overall incarceration rates and average sentence lengths, the report considers sentences as a percentage of the guidelines range midpoint.

Incarceration rates exclude suspended sentence time and are based on jail/prison time, home detention time, and credit for time served prior to sentencing. Unless noted, average sentence lengths are based on the median non-suspended sentence, which is defined as the sum of incarceration, credit for time served, and home detention. To reduce the influence of outliers (i.e., extreme sentences), the median value rather than the mean value is used. Lastly, the sentence as a percentage of the guidelines range midpoint captures where in the guidelines range a sentence falls relative to the midpoint.⁷ A value less than 100% indicates that the sentence is less than the guidelines midpoint. A value of 100% indicates that the sentence equals the guidelines midpoint. A value greater than 100% indicates that the sentence is greater than the guidelines midpoint.

The analyses also consider incarceration rates and average sentence lengths for select categories of offenses (crimes of violence, firearms/weapons offenses, felony narcotics offenses), as well as sentences for offenses that carry mandatory minimums and those that carry life sentences.

Sentencing guidelines compliance: Sentencing guidelines compliance measures whether a sentence is within, below, or above the guidelines. A sentence is defined as *within* guidelines if it meets at least one of the following conditions:

- The non-suspended sentence (defined as the sum of incarceration, credit for time served prior to sentence, and home detention) is within the guidelines range;
- The non-suspended sentence exceeds the upper guidelines limit but includes only credit for time served;

⁷ The non-suspended sentence as a percentage of the guidelines range midpoint cannot be calculated for events in which the lower guidelines limit is the same as the upper guidelines limit or events in which the lower guidelines limit, upper guidelines limit, or non-suspended sentence is missing.



- The sentencing event was disposed of by an MSCCSP binding plea agreement (prior to April 1, 2021, this disposition type was referred to as an ABA plea agreement); or
- The sentencing event involved the imposition of one or more correction options and the total sentence falls within or above the recommended guidelines range (excluding sentencing events that contain a crime of violence, child sexual abuse, or escape).

Sentences that do not meet one or more of the above conditions are identified as either *below* or *above* guidelines, depending on whether the non-suspended sentence is below the lower limit or above the upper limit of the recommended guidelines range.

In addition to considering overall sentencing guidelines compliance, the analyses consider sentencing guidelines compliance by judicial circuit, offense type (person, drug, property), for select offense categories (crimes of violence, firearms/weapons offenses, felony narcotics offenses), and by disposition type (ABA plea agreement, other plea agreement, plea-no agreement, bench trial, jury trial).

FINDINGS

Findings are categorized into three main sections. The first section presents the race of guidelines individuals⁸ sentenced in Maryland circuit courts both statewide and by judicial circuit from CY 2018 through 2020. The second section presents criminal history, offense, and disposition characteristics by race. The third section presents sentencing outcomes by race, including incarceration rates, average sentence lengths, sentencing guidelines compliance, and the sentence as a percentage of the guidelines midpoint.

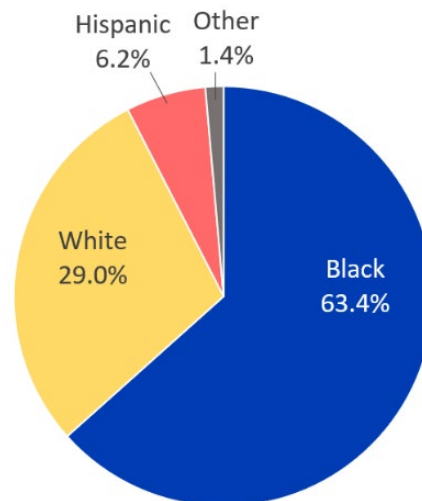
Guidelines-Eligible Sentencing Events by Race and Judicial Circuit

Statewide: Figure 1 illustrates the race of guidelines individuals sentenced in Maryland circuit courts from CY 2018 through 2020. During this time, approximately 63.4% of guidelines-sentenced individuals were Black, 29.0% were White, 6.2% were Hispanic, and 1.4% were of an Other race (see Figure 1). These percentages varied by judicial circuit and, as will be discussed later in the report, offense type and other sentencing factors.

Figure 1. Guidelines-Sentenced Individuals by Race

	Total	
	#	%
Black	17,211	63.4%
White	7,886	29.0%
Hispanic	1,673	6.2%
Other	378	1.4%
Total	27,148	

Counts and percentages exclude missing data.



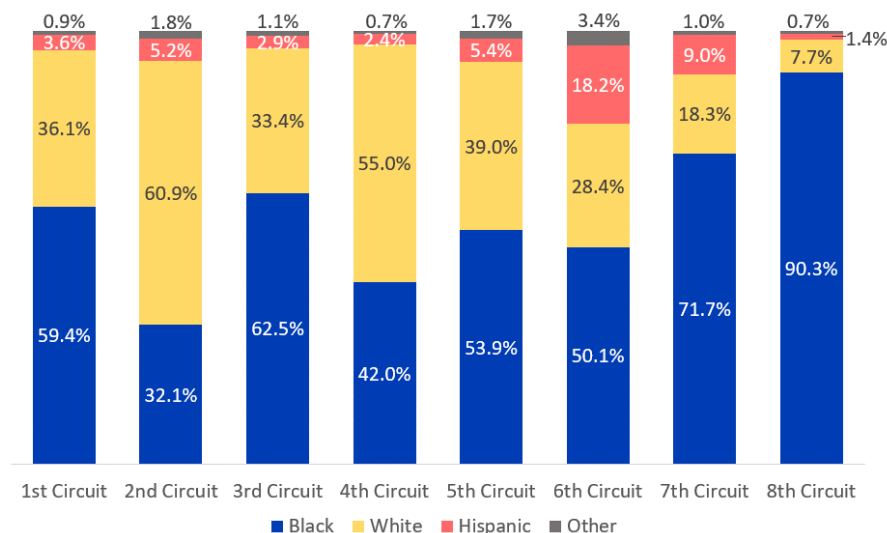
Note. This figure and the corresponding table include only guidelines individuals who were sentenced in Maryland circuit courts in CY 2018 – CY 2020.

⁸ This report defines guidelines individuals as those individuals sentenced at guidelines-eligible circuit court sentencing events (for a description of guidelines-eligible sentencing events, see *Scope of the Sentencing Guidelines*).



Judicial Circuit: Trends emerged when looking at the race of guidelines-sentenced individuals by judicial circuit. Overall, the 8th Circuit and the 3rd Circuit sentenced the most guidelines individuals statewide in 2018 through 2020. As Figure 2 illustrates, Black individuals composed over half of guidelines individuals sentenced in six of the eight judicial circuits. Guidelines-eligible sentencing events in the 8th Circuit were comprised of the largest percentage of Black individuals (90.3%) relative to the other circuits, while sentencing events in the 6th Circuit were comprised of the largest percentage of Hispanic individuals (18.2%) relative to the other circuits. Guidelines-eligible sentencing events in the 2nd Circuit were comprised of the largest percentage of White individuals (60.9%) relative to other circuits, though the total number of sentencing events in the 2nd Circuit was small relative to the other circuits. Guidelines-eligible sentencing events in the 6th Circuit were comprised of the largest percentage of Other race individuals (3.4%) relative to the other circuits. There is notable variation in the racial composition of the general population of jurisdictions that comprise the respective judicial circuits. For instance, in the 2nd Judicial Circuit, White individuals comprise the largest percentage (81.5%) of the general population (USAFacts, 2022) and the largest percentage (60.9%) of the guidelines-sentenced population. Differences in the racial composition of guidelines-sentenced individuals across judicial circuits are expected given that there are differences in the racial composition of the general population of these judicial circuits.

Figure 2. Race of Guidelines-Sentenced Individuals by Judicial Circuit



Total Sentenced Individuals		
	#	%
1 st Circuit	1,882	6.9%
2 nd Circuit	1,536	5.7%
3 rd Circuit	5,427	20.0%
4 th Circuit	1,497	5.5%
5 th Circuit	3,555	13.1%
6 th Circuit	3,740	13.8%
7 th Circuit	4,284	15.8%
8 th Circuit	5,227	19.3%
Total	27,148	

Note. This figure and the corresponding table include only guidelines individuals who were sentenced in Maryland circuit courts in CY 2018 – CY 2020.

Criminal History, Offense, and Disposition Characteristics by Race

The sentencing guidelines are determined by two factors: (1) the offender score and (2) the offense score (for person offenses) or the offense seriousness category (for drug and property offenses). The sentencing guidelines are reviewed by the judge prior to sentencing and may be used by the State's Attorney's Office or defense counsel to negotiate the terms of a plea agreement. This section of the report provides a descriptive analysis of guidelines-sentenced



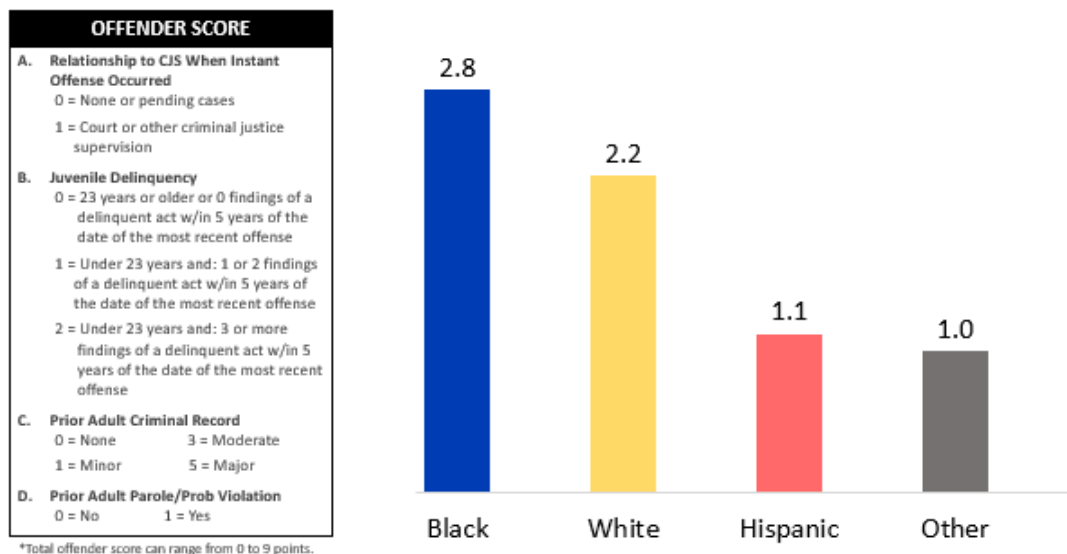
individuals' offender scores, criminal history, offense characteristics, legal representation, and disposition type.

Offender Score and Criminal History: Prior criminal involvement provides important context when evaluating differences between racial groups in sentencing outcomes. This subsection of the report examines guidelines-sentenced individuals' criminal history by race. First, this subsection examines the offender score and its four components. Then, it provides a more in-depth analysis of the offenses that comprise guidelines-sentenced individuals' prior adult criminal records. Altogether, the findings in this subsection suggest that individuals' criminal histories may be a primary driver of the racial differences in sentencing that will be discussed later in this report.

As noted, the sentencing guidelines offender score is the guidelines measure of prior criminal involvement and is composed of four parts: (1) involvement in the criminal justice system (CJS) at the time of the instant offense, (2) juvenile delinquency, (3) prior adult criminal record, and (4) prior adult parole or probation violations. The total offender score ranges from zero to nine points.

Figure 3 illustrates the scoring metric for the offender score and the mean total offender score by race. Overall, Black individuals had the highest mean offender score (2.8), followed by White individuals (2.2). Mean scores among Hispanic and Other race individuals (1.1 and 1.0, respectively) were notably lower than those observed among Black and White individuals. These differences suggest that Black guidelines individuals, sentenced from 2018 through 2020, may have had more prior criminal convictions or more serious prior criminal convictions relative to individuals of all other race categories. The low rate of prior criminal justice system involvement among Hispanic sentenced individuals provides important context for the guidelines compliance and sentence length analyses that will be discussed later in the report.

Figure 3. Mean Offender Score by Race



Note. This figure includes only guidelines individuals who were sentenced in Maryland circuit courts in CY 2018 – CY 2020.

Examining each component of the offender score (Figure 4) provides additional insight into the differences between racial groups in prior criminal involvement.

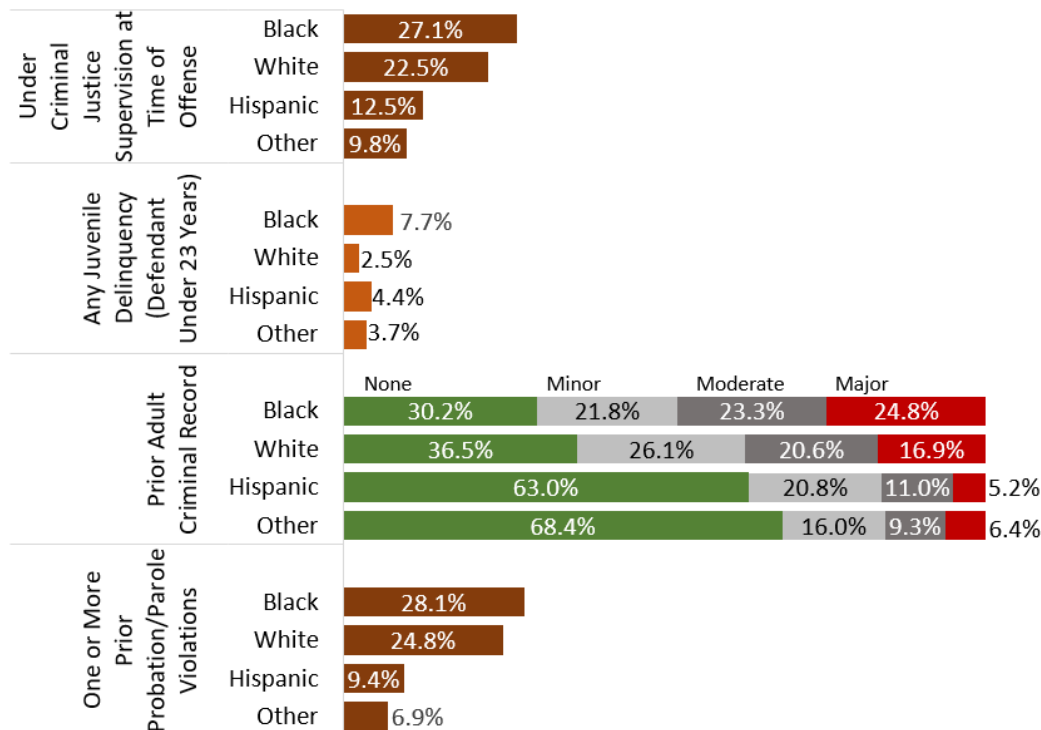
- Criminal Justice System (CJS) Involvement at the Time of the Instant Offense:** This measure captures whether the individual was involved in the CJS as the result of an adjudication of guilt at the time of the instant offense. Involvement in the CJS includes incarceration, parole, probation, mandatory supervision, or a comparable status. Black and White guidelines-sentenced individuals were more likely than Hispanic and Other race individuals to be involved in the CJS at the time of the instant offense (27.1% and 22.5% versus 12.5% and 9.8%, respectively).
- Juvenile Delinquency:** Juvenile delinquency is calculated based on the number of findings of a delinquent act (i.e., the juvenile court equivalent of an adjudication of guilt) in the individual's history. This measure is calculated only for individuals who were younger than 23 years old at the time of their most recent instant offense. Individuals who were 23 years or older at the time of their most recent instant offense automatically score zero on this measure, regardless of their juvenile record. Black guidelines-sentenced individuals who were under 23 years as of the date of the most



recent instant offense were more likely than White, Hispanic, and Other race individuals to have any record of prior juvenile delinquency (7.7% versus 2.5 %, 4.4% and 3.7%, respectively).

- **Prior Adult Criminal Record:** The prior adult criminal record is calculated based on the number and severity of prior convictions. An individual's prior adult record is scored as None, Minor, Moderate, or Major. Black and White guidelines-sentenced individuals were more likely than Hispanic or Other race individuals to have any prior adult criminal record (i.e., to score a Minor, Moderate, or Major prior record; 69.8% and 63.5% versus 37.0% and 31.6%, respectively).⁹ Furthermore, Black individuals were more likely than White, Hispanic, or Other race individuals to score major prior criminal records (24.8% versus 16.9%, 5.2%, and 6.4%, respectively).
- **Prior Probation or Parole Violation:** This measure captures whether the individual was ever adjudicated in violation of adult probation, parole, or an equivalent supervisory status. Black and White guidelines-sentenced individuals were more likely than Hispanic and Other race individuals to have a record of prior probation or parole violations (28.1% and 24.8% versus 9.4% and 6.9%, respectively).

Figure 4. Offender Score Components by Race



Note. This figure includes only guidelines individuals who were sentenced in Maryland circuit courts in CY 2018 – CY 2020.

⁹ An individual can be scored as None under the prior adult criminal record but have a prior adult criminal record. This would occur if the individual scored a minor prior adult criminal record, and the criminal record decay factor was applied. The decay factor reduces the individual's prior adult criminal record score by one level (i.e., from major to moderate, moderate to minor, or minor to none) if the individual has lived in the community for at least 10 years prior to the instant offense without any criminal justice system involvement resulting from an adjudication of guilt or a plea of nolo contendere.



While the offender score provides a general idea as to the individual's criminal history, it does not immediately indicate the specific offenses for which the individual has a history of conviction. For instance, there are 41 different combinations of prior adult criminal records that would place an individual in the major prior record category, ranging from having one prior conviction for a seriousness category I offense to having 10 or more prior convictions for seriousness category VII offenses.¹⁰ Is it possible that a large number of guidelines-sentenced individuals are scoring major prior records based on the accumulation of multiple minor offenses?¹¹ If so, is this pattern more prevalent among Black individuals than those of other racial groups?

To answer this question, the MSCCSP conducted an in-depth analysis of guidelines-sentenced individuals' prior adult criminal records using data from Maryland's Department of Public Safety and Correctional Services (DPSCS).¹² Prior adult criminal record data, including arrests and convictions, were obtained via the DPSCS from Maryland's Criminal Justice Information Service (CJIS) and merged with MSCCSP data for all guidelines individuals sentenced from calendar years 2008 through 2012 (n=54,407).¹³ Similar to the 2018 through 2020 sentencing guidelines data used in the analyses in this report, approximately 65.8% of guidelines individuals sentenced from 2008 through 2012 were Black, 29.8% were White, 3.6% were Hispanic, and 0.8% were of an Other race.

Initially, the Commission conducted this analysis using DPSCS data to determine whether differences in the prior adult criminal record might be due to the accumulation of multiple minor offenses among Black sentenced individuals. For instance, an individual can score a major adult criminal record if they have 10 or more convictions for seriousness category VII offenses, each resulting from separate criminal events, and no more serious offense convictions.

¹⁰ Multiple offenses can be counted towards the individual's prior adult criminal record only if they stem from multiple criminal transactions. For instance, if an individual was previously convicted for a robbery and an assault that occurred at the same time (i.e., during the same criminal transaction), only the most serious of the two offenses would count towards the calculation of the individual's prior adult criminal record. In determining whether multiple crimes are committed in the course of the same transaction, the Maryland Sentencing Guidelines Manual (MSGM) instructs that the person filling out the guidelines worksheet consider whether the crimes: (1) were committed close in time, in an uninterrupted course of conduct; (2) occurred in the same location; and (3) were similar in nature or intertwined (for example, whether they share a common scheme or purpose).

¹¹ This question was initially brought to the attention of the Commission in response to the MSCCSP's 2020 Criminal Justice Community Survey.

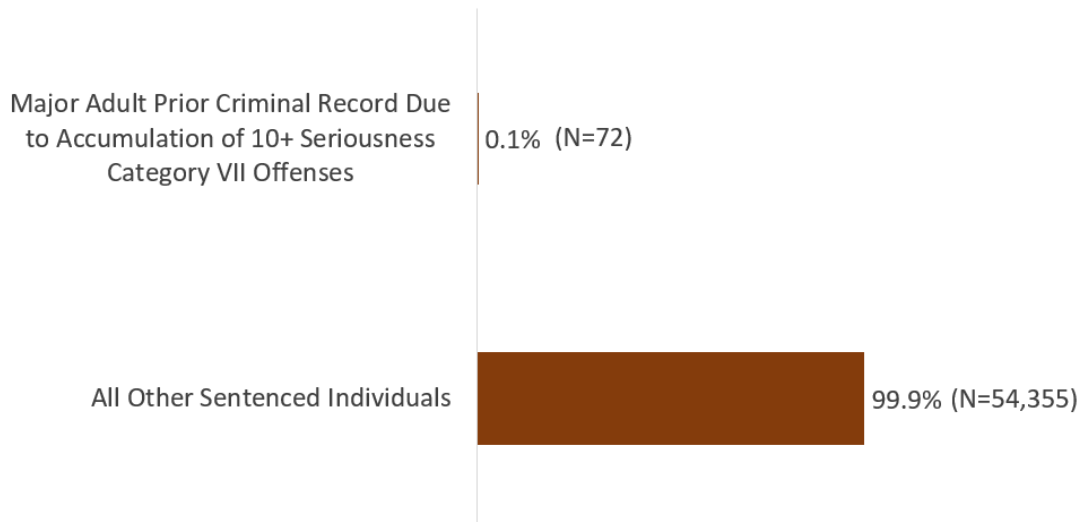
¹² The MSCCSP originally obtained the DPSCS data in 2015 with the Maryland Data Analysis Center (MDAC) for a different analysis, producing a joint [report](#) in 2018 on juvenile delinquency (Santos et al., 2018). The MSCCSP reused the data, with permission from DPSCS, to run a new analysis, partly for this section of the present report and partly in response to related concerns raised in its 2020 Criminal Justice Community Survey.

¹³ Note that the analysis utilizing DPSCS data covers guidelines individuals sentenced during an earlier period than the analyses in the rest of the report (i.e., 2008 versus 2012 versus 2018 through 2020, respectively). This was done because the DPSCS data used for this analysis was obtained for a prior project.



The analysis of the prior record data found no evidence that the accumulation of multiple minor offenses among guidelines-sentenced individuals contributed to racial disparities in the prior adult criminal record score. Moreover, as Figure 5 shows, only a very small number of sentenced individuals across any race (0.1%; $n = 72$) scored a major prior record based on the accumulation of multiple minor offenses. The data did, however, offer insight into why Black individuals, on average, scored higher on the prior adult criminal record than White, Hispanic, or Other race individuals.

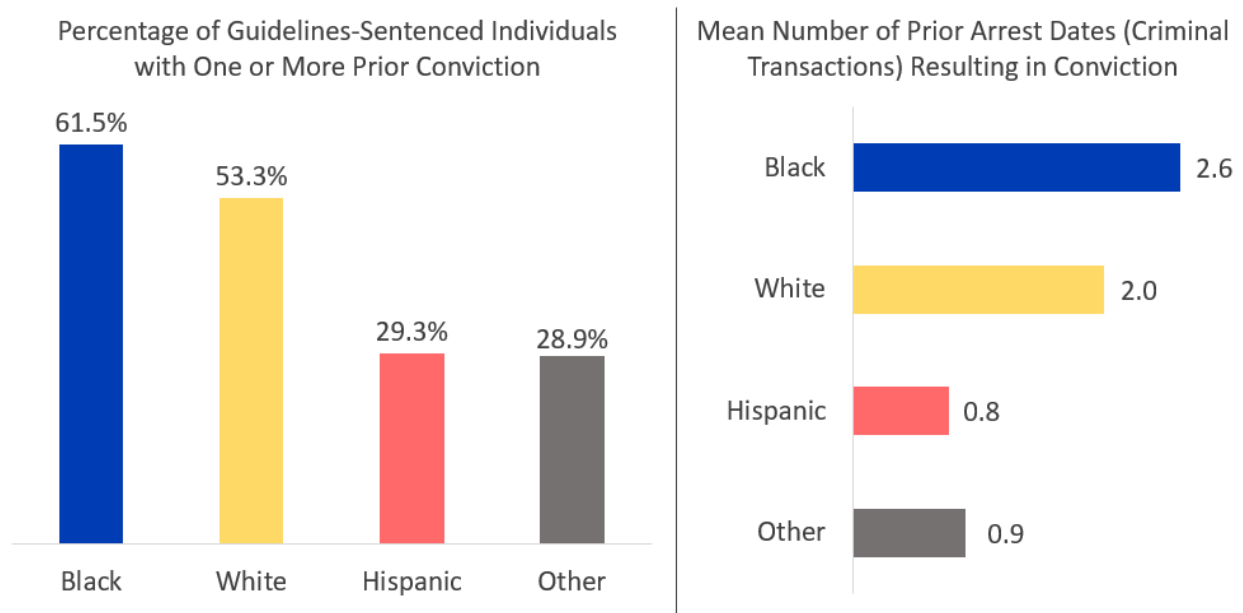
Figure 5. Guidelines-Sentenced Individuals Who Scored a Major Prior Record Due to the Accumulation of Multiple Minor Offenses



Note. This figure includes only guidelines individuals who were sentenced in Maryland circuit courts in CY 2008 – CY 2012.

Among guidelines individuals sentenced from 2008 to 2012, Black individuals, on average, were more likely than White, Hispanic, or Other race individuals to have any prior adult criminal record, to have a greater number of prior adult convictions, and to have a record of more serious prior adult convictions. As the left side of Figure 6 illustrates, 61.5% of Black guidelines individuals sentenced from 2008 through 2012 had one or more prior conviction, whereas 53.3% of White sentenced individuals had one or more prior conviction. The difference is even more striking when comparing Black individuals to Hispanic and Other race individuals, only 29.3% and 28.9% of whom had one or more prior conviction, respectively.

Figure 6. Prior Adult Convictions by Race

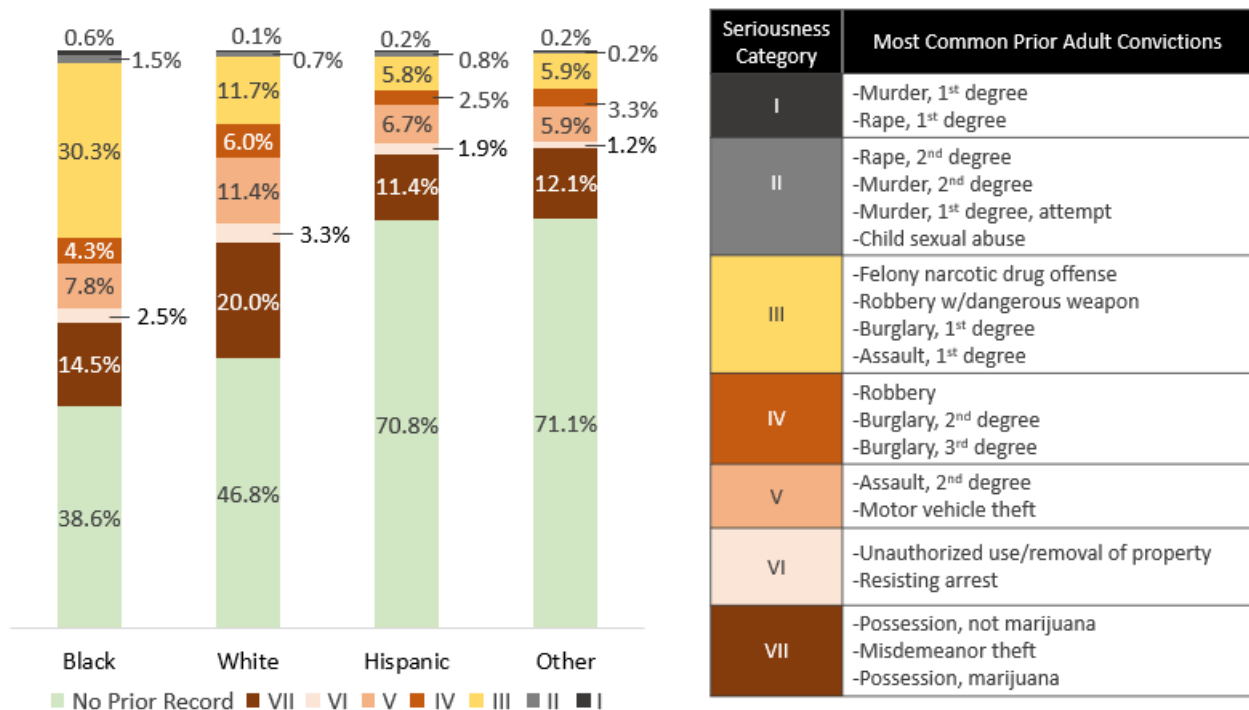


Note. This figure includes only guidelines individuals who were sentenced in Maryland circuit courts in CY 2008 – CY 2012.

The right side of Figure 6 illustrates that Black guidelines individuals sentenced from 2008 to 2012 also had a greater number of prior adult convictions stemming from separate criminal transactions, relative to individuals of other racial groups. On average, Black sentenced individuals had 2.6 prior convictions stemming from separate criminal transactions, whereas White sentenced individuals had an average of 2 prior convictions stemming from separate criminal transactions. Hispanic and Other race sentenced individuals had an average of less than one prior conviction stemming from separate criminal transactions.

As Figure 7 illustrates, the most serious prior convictions among Black sentenced individuals were more likely to fall in the most serious categories of offenses (i.e., seriousness category I, II, or III), relative to sentenced individuals of all other race categories. For 32.4% of Black sentenced individuals, the most serious prior conviction was for a seriousness category I, II, or III offense, while that figure was only 12.5% for White individuals, 6.8% for Hispanic individuals, and 6.3% for Other race individuals. An individual's most serious prior conviction plays an important role in calculating the guidelines, as it is one factor that determines the individual's prior adult criminal record score.

Figure 7. Most Serious Prior Adult Conviction by Race



Note. This figure includes only guidelines individuals who were sentenced in Maryland circuit courts in CY 2008 – CY 2012.

In summary, the analyses in this subsection found that Black guidelines-sentenced individuals were more likely than sentenced individuals of all other race categories to have serious prior criminal records (i.e., higher offender scores) and less likely to have no prior criminal involvement. Additional data indicated that the higher total offender scores observed among Black guidelines individuals were likely due to their accumulation of a greater number of prior serious convictions than Hispanic, White, or Other race individuals. These combined results appear to explain, at least in part, the differences in sentence outcomes that will be discussed later in the report.

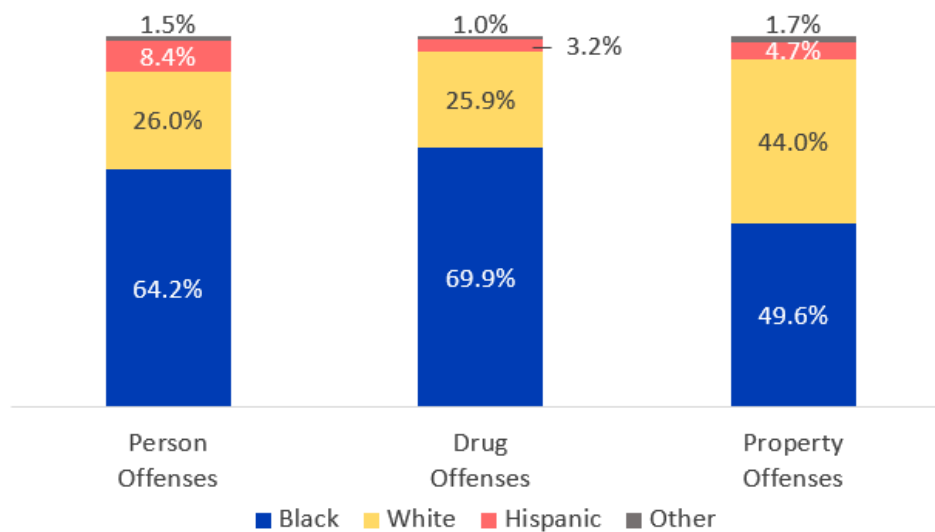
Offense Characteristics: Prior criminal involvement is one of two measures that determine an individual's sentencing guidelines and, thereby, inform their final sentence. Offense characteristics, including offense type and the offense score (for person offenses) or the offense seriousness category (for drug and property offenses) are the second measure.



Seriousness categories are assigned to each offense by the Commission and range from I (most serious) to VII (least serious). The Commission determines seriousness category classifications by looking at offenses with similar statutory maximum penalties, offense types, and felony/misdemeanor classifications. The offense seriousness category, either by itself or in combination with other variables, factors into the guidelines calculation for all types of offenses.

Offense Type: As Figure 8 illustrates, most guidelines-eligible sentencing events in which the most serious offense was a person or drug offense involved Black individuals (64.2% and 69.9%, respectively), while Black and White individuals composed a more similar percentage of sentencing events in which the most serious offense was a property offense (49.6% and 44.0%, respectively). Hispanic and Other race individuals made up a relatively small percentage of all offense types.

Figure 8. Offense Type by Race

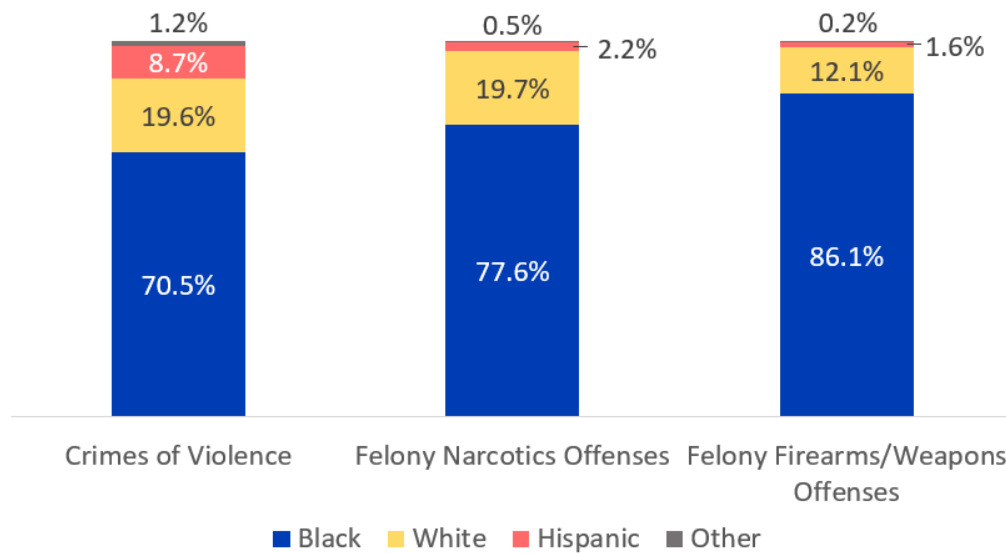


	Total		Person Offenses		Drug Offenses		Property Offenses	
	#	Valid %	#	Valid %	#	Valid %	#	Valid %
Black	17,211	63.4%	9,128	64.2%	5,757	69.9%	2,326	49.6%
White	7,886	29.0%	3,693	26.0%	2,130	25.9%	2,063	44.0%
Hispanic	1,673	6.2%	1,191	8.4%	262	3.2%	220	4.7%
Other	378	1.4%	210	1.5%	86	1.0%	82	1.7%
Valid Total	27,148		14,222		8,235		4,691	

Note. This figure and the corresponding table include only guidelines individuals who were sentenced in Maryland circuit courts in CY 2018 – CY 2020. Counts and percentages exclude missing data.

Black individuals also composed the majority of guidelines-eligible sentencing events in which the most serious offense was a crime of violence, felony narcotics offense, or felony firearms/weapons offense (Figure 9), followed by White individuals, Hispanic individuals, and Other race individuals.

Figure 9. Select Offense Categories by Race

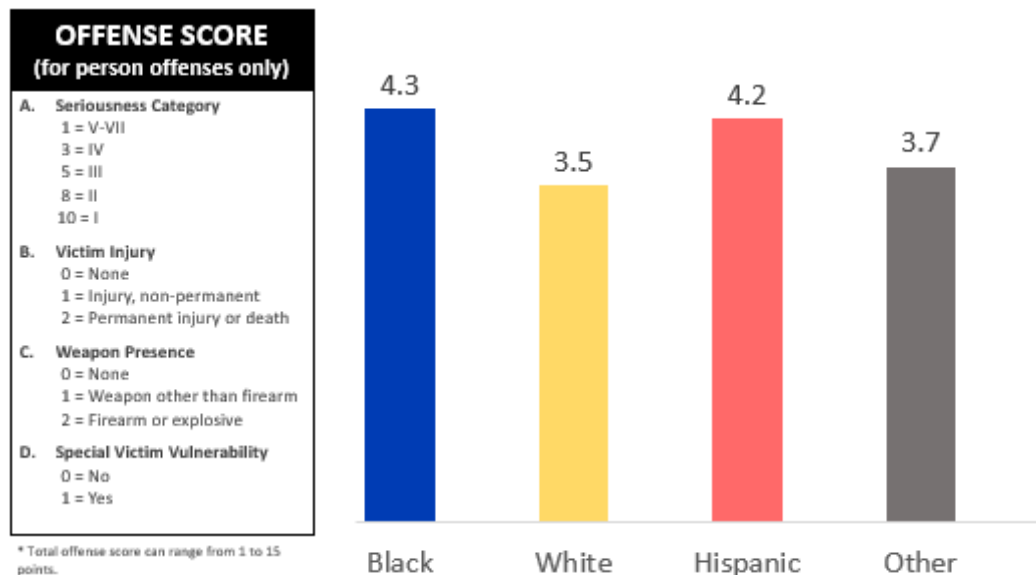


Note. This figure includes only guidelines individuals who were sentenced in Maryland circuit courts in CY 2018 – CY 2020.

Offense Score: As noted, the offense score measures the severity of the offense and is calculated for person offenses only. The offense score consists of four components: (1) seriousness category, (2) weapon presence, (3) victim injury, and (4) special victim vulnerability. This subsection first examines the total offense score and then examines its four components. Altogether, the findings in this section suggest that key differences in offense severity may be another driver of the racial differences in sentencing that will be discussed later in this report.

Figure 10 illustrates the scoring metric for the offense score and the mean total offense score by race. Overall, Black and Hispanic individuals, on average, scored higher on the offense score than White and Other race individuals (4.3 points and 4.2 points versus 3.5 points and 3.7 points, respectively).

Figure 10. Mean Offense Score for Person Offenses by Race



Note. This figure includes only guidelines individuals whose most serious offense was a person offense and who were sentenced in Maryland circuit courts in CY 2018 – CY 2020.

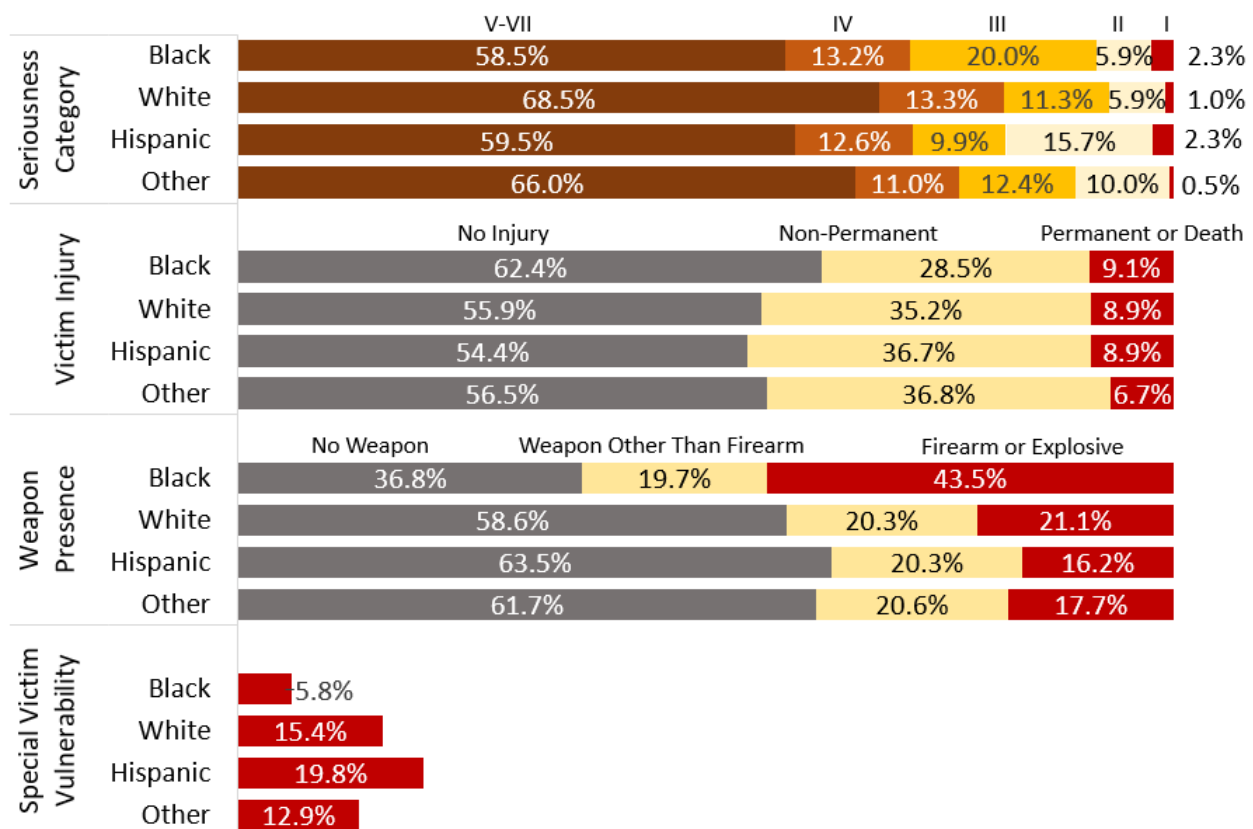
Notably, each of the four components of the offense score displayed differences by race. Figure 11 presents each component of the offense score by race.

- Seriousness Category**: This measure scores the offense seriousness category, with lower scores equating to less serious offenses and higher scores equating to more serious offenses. Seriousness category V, VI, and VII offenses are grouped together under one category. When looking at guidelines-eligible sentencing events in which the most serious offense was a person offense, Hispanic individuals were significantly more likely than Black, White and Other race individuals to be sentenced for the most serious categories of offenses (i.e., seriousness categories I and II) (18.0% versus 8.2%, 6.9%, and 10.5%, respectively). The most common seriousness category I and II offenses were *Child abuse-sexual* and *Murder, 1st degree*.
- Victim Injury**: Victim injury includes physical or psychological injury and is scored as None, Non-Permanent Injury, or Permanent Injury or Death. Black sentenced individuals were slightly more likely to score no victim injury points than White, Hispanic, or Other race sentenced individuals (62.4% versus 55.9%, 54.4%, and 56.5%, respectively), whereas Black individuals were less likely than Hispanic, White or Other race individuals to score one point for non-permanent victim injury (28.5% versus 36.7%, 35.2%, and 36.8%, respectively). A similar percentage of Black, Hispanic, White and Other race individuals scored points for permanent victim injury or death (9.1%, 8.9%, and 8.9%, and 6.7%, respectively).



- **Weapon Presence:** Weapon presence is scored as None, Weapon Other than Firearm, or Firearm or Explosive. There was a notable difference in weapon presence points scored among Black sentenced individuals versus White or Hispanic sentenced individuals. Black individuals were more than twice as likely as Hispanic, White, and Other race individuals to score points for the presence of a firearm or explosive (43.5% versus 16.2%, 21.1%, and 17.7%, respectively). Even when excluding firearms/weapons offenses (all of which automatically score points for weapon presence), Black individuals were more than twice as likely as Hispanic, White, and Other race individuals to score points for the presence of a firearm or explosive (24.7% versus 10.1%, 11.1%, and 10.5% respectively (analysis not pictured)).
- **Special Victim Vulnerability:** Special victim vulnerability is a yes/no question, and vulnerability is defined as a victim who is under 11 years old, over 65 years old, or physically or cognitively impaired at the time of the offense. Individuals score one point if the person offense involves a vulnerable victim. In contrast to weapon presence, Black individuals were the least likely to score one point for special victim vulnerability, while Hispanic individuals were the most likely to score one point for special victim vulnerability (5.8% versus 19.8% percent). Approximately 15.4% of White individuals and 12.9% of Other race individuals scored one point for special victim vulnerability.

Figure 11. Offense Score Components for Person Offenses by Race

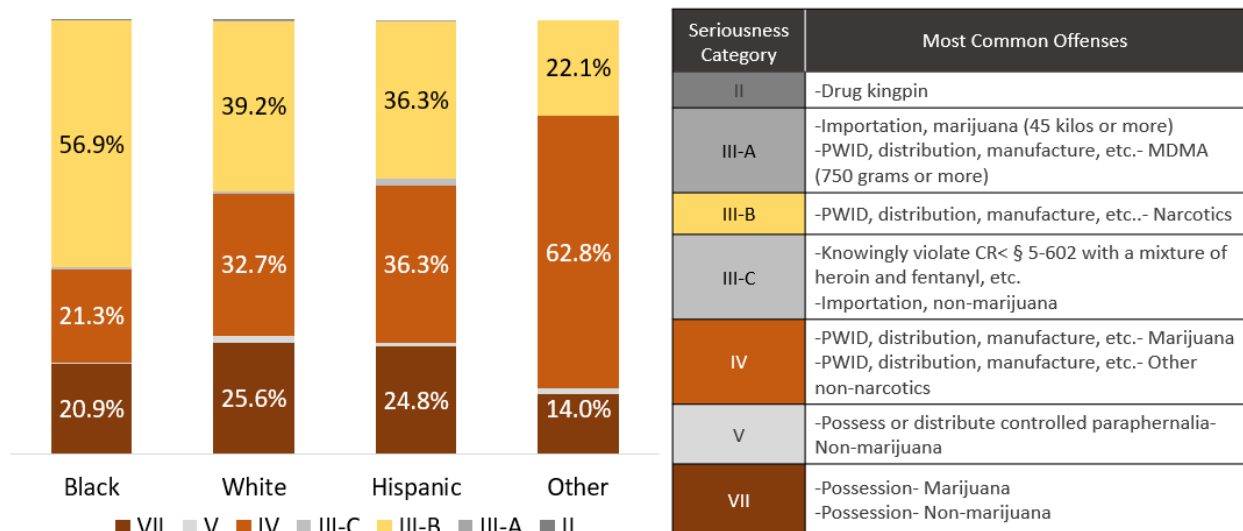


Note. This figure includes only guidelines individuals whose most serious offense was a person offense and who were sentenced in Maryland circuit courts in CY 2018 – CY 2020.



Seriousness Categories for Drug Offenses: The guidelines range for drug offenses is determined by the offender score and the offense seriousness category. The seriousness categories for individuals sentenced for drug offenses, by race (Figure 12), display a different trend than those for person offenses. Black guidelines individuals sentenced for drug offenses were more likely than White or Hispanic guidelines individuals to be sentenced for the most serious offenses. Overall, seriousness category III-B drug offenses were the most common drug offense among guidelines individuals sentenced from 2018 through 2020. This category consists largely of felony narcotics or hallucinogenic offenses, including their manufacture, distribution, and possession with intent to distribute (PWID). Approximately 56.9% of Black individuals whose most serious offense was a drug offense were sentenced for seriousness category III-B offenses, while only 39.2% of White individuals, 36.3% of Hispanic individuals, and 22.1% of Other race individuals were sentenced for these offenses. Very few individuals of any race (n=13) were sentenced for the most serious categories of drug offenses (i.e., seriousness categories III-A and II), which include the importation of non-marijuana controlled dangerous substances (CDS) and drug kingpin offenses.

Figure 12. Drug Offense Seriousness Categories by Race



Note. This figure includes only guidelines individuals whose most serious offense was a drug offense and who were sentenced in Maryland circuit courts in CY 2018 – CY 2020.

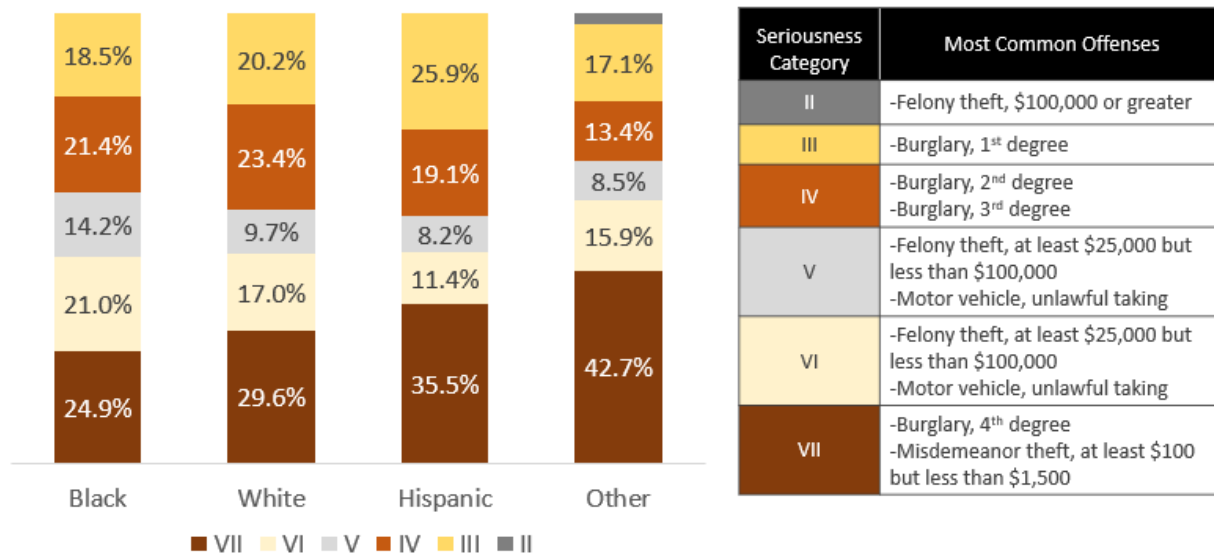
In contrast to Black individuals, White, Hispanic, and Other race guidelines individuals whose most serious offense was a drug offense were more likely to be sentenced for seriousness category IV and seriousness category VII drug offenses. Seriousness category IV drug offenses consist primarily of felony non-narcotic and marijuana offenses, including their manufacture, distribution, and PWID. Among guidelines individuals whose most serious offense was a drug offense, 32.7% of White individuals, 36.3% of Hispanic individuals, and 62.8% of Other race individuals were sentenced for seriousness category IV offenses. Seriousness category VII offenses consist primarily of the possession of marijuana or non-marijuana CDS. Among guidelines individuals whose most serious offense was a drug offense, 25.6% of White



individuals, 24.8% of Hispanic individuals, and 14% of Other race individuals were sentenced for seriousness category VII offenses.

Seriousness Categories for Property Offenses: Like drug offenses, the guidelines range for property offenses is also determined by the offender score and the offense seriousness category. The seriousness categories for property offenses by race (Figure 13) illustrate a somewhat different trend than those for drug or person offenses. A greater percentage of Hispanic individuals, relative to individuals of other racial groups, were sentenced for some of the most serious and least serious property offenses. Approximately 25.9% of Hispanic individuals whose most serious offense was a property offense were sentenced for seriousness category III property offenses, primarily *Burglary, 1st degree*, while 35.5% of Hispanic individuals were sentenced for seriousness category VII property offenses. In contrast, over half of Black and White individuals were sentenced for mid-range property offenses (i.e., seriousness categories IV, V, or VI; 56.6% and 50.1%, respectively). Seriousness category VII offenses comprised the largest percentage of property offenses sentenced among Other race individuals (42.7%) relative to Black, White, or Hispanic individuals.

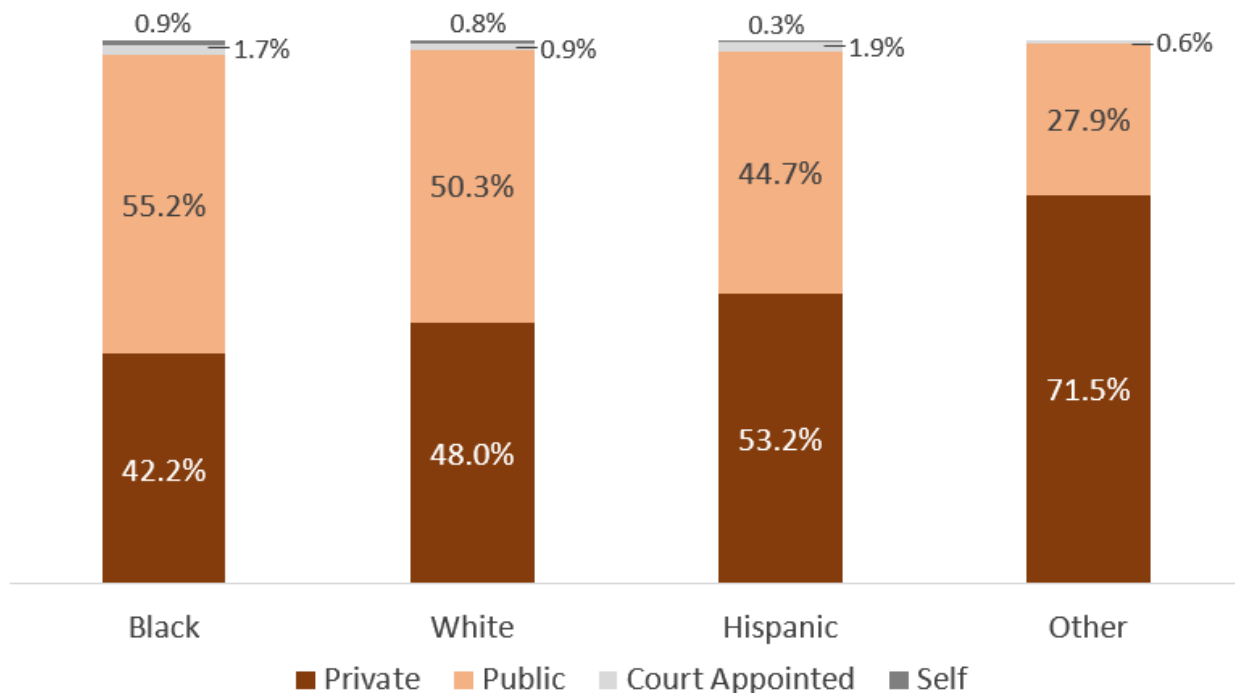
Figure 13. Property Offense Seriousness Categories by Race



Note. This figure includes only guidelines individuals whose most serious offense was a property offense and who were sentenced in Maryland circuit courts in CY 2018 – CY2020.

Representation: Individuals sentenced in the circuit courts may be represented by private attorneys, public defenders, court appointed attorneys, or themselves. Figure 14 illustrates representation among guidelines-sentenced individuals by race.¹⁴ The vast majority of all individuals are represented by either public defenders or private attorneys. Hispanic and Other race individuals were more likely than Black and White individuals to be represented by private attorneys (53.2% and 71.5% versus 42.2% and 48%, respectively). Black and White individuals were more likely than Hispanic and Other race individuals to be represented by public defenders (55.2% and 50.3%, versus 44.7%, and 27.9%, respectively).

Figure 14. Representation by Race



Note. This figure includes only guidelines-eligible sentencing events disposed of in Maryland circuit courts in CY 2018 – CY 2020.

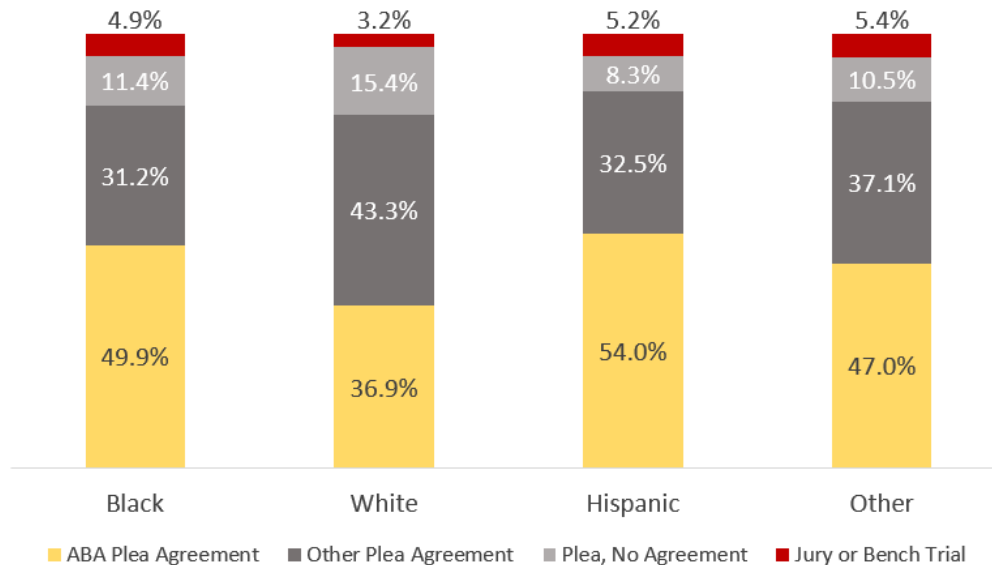
Disposition Type: Disposition type refers to how a case was disposed of or resolved and may be a source of differences in sentence outcomes. Generally, a case can be disposed of via a plea agreement or a trial. Plea agreements are, by far, the most common disposition type among guidelines individuals sentenced in Maryland circuit courts. Approximately 94% of all guidelines individuals sentenced statewide from 2018 through 2020 had their cases disposed of via a plea agreement. The MSCCSP further classifies disposition type into five categories: ABA or MSCCSP binding plea agreement; other plea agreement; plea, no agreement; bench trial; and jury trial.

¹⁴ Type of legal representation is missing in 9.9% of sentencing events.



Figure 15 illustrates disposition type among guidelines-sentenced individuals by race. Overall, disposition types were similar across races, though sentencing events involving Black, Hispanic, and Other race individuals were more likely than sentencing events involving White individuals to be disposed of via an ABA plea agreement (49.9%, 54%, and 47% versus 36.9%, respectively). Jury and bench trials were the least common disposition types among sentenced individuals of all races/ethnicities.

Figure 15. Disposition Type by Race



Note. This figure includes only guidelines-eligible sentencing events disposed of in Maryland circuit courts in CY 2018 – CY 2020.

Sentencing Trends and Sentencing Guidelines Compliance by Race

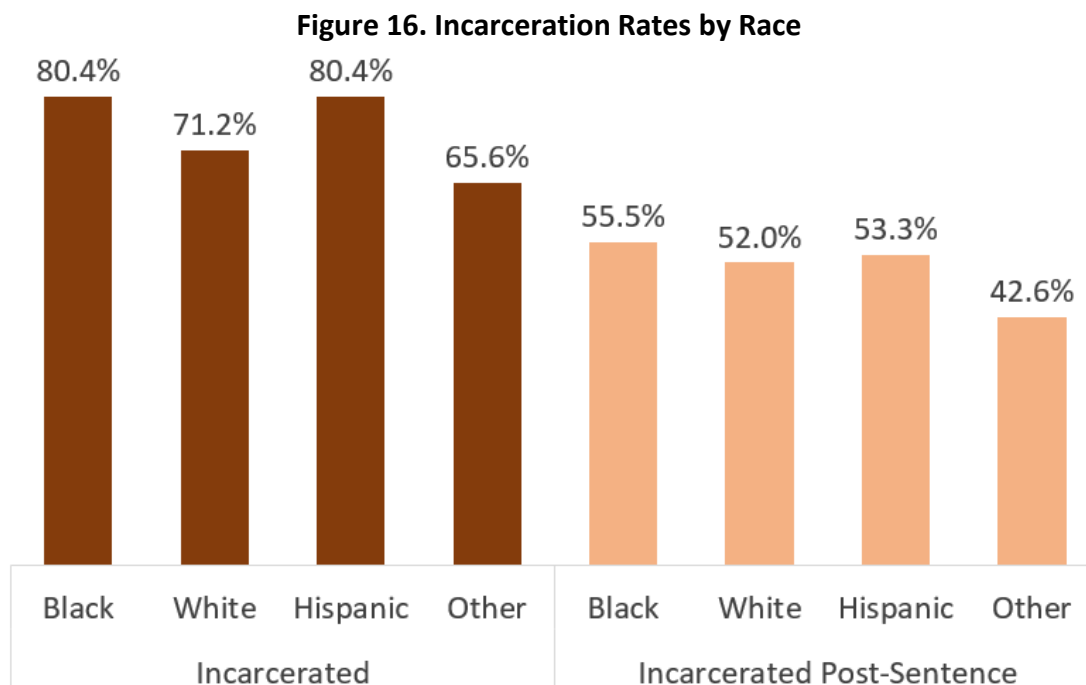
The sentencing guidelines were developed to reduce the likelihood of disparities in sentencing, including racial disparities. This section examines sentencing outcomes to identify potential sources of racial differences. Four sentencing outcomes are presented: incarceration rates, average non-suspended sentence lengths, sentencing guidelines compliance, and the sentence as a percentage of the guidelines midpoint.

Incarceration Rates: The sentencing guidelines provide judges with two recommendations. One, they recommend whether to incarcerate an individual. Two, if the guidelines recommend incarceration, they provide a recommended sentence length range based on offense severity and the individual's criminal history. This subsection examines overall incarceration rates by race and for select offense categories.¹⁵

¹⁵ Incarceration rates by judicial circuit and race were also examined; however, it was concluded that these findings did not provide any meaningful insight into sentencing trends, as they do not control for differences in offense severity and criminal history across judicial circuits. Offense severity and prior criminal history are significant predictors of incarceration. Therefore, this analysis was omitted from the report. This analysis is available upon request.

Figure 16 illustrates the overall incarceration rate and post-sentence incarceration rate by race. The distinction between overall incarceration rates and post-sentence incarceration rates is important. Overall incarceration rates include sentenced individuals whether they were incarcerated only pre-sentence, both pre- and post-sentencing, or only post-sentencing. Post-sentence incarceration excludes sentenced individuals whose only term of incarceration was served pre-sentence (i.e., credit for time served). Generally, the sentencing judge has little control over whether an individual is detained prior to sentencing or the amount of time an individual may serve pre-sentence, whereas typically the decision as to whether a convicted individual is incarcerated post-sentence is within the discretion of the sentencing judge. This is important because time served prior to sentence may be an indirect source of observed sentencing disparities. For example, Donnelly and MacDonald (2018) found that bail and pretrial detention increase an individual's likelihood of pleading guilty, being convicted, being incarcerated, and receiving a longer incarceration sentence.

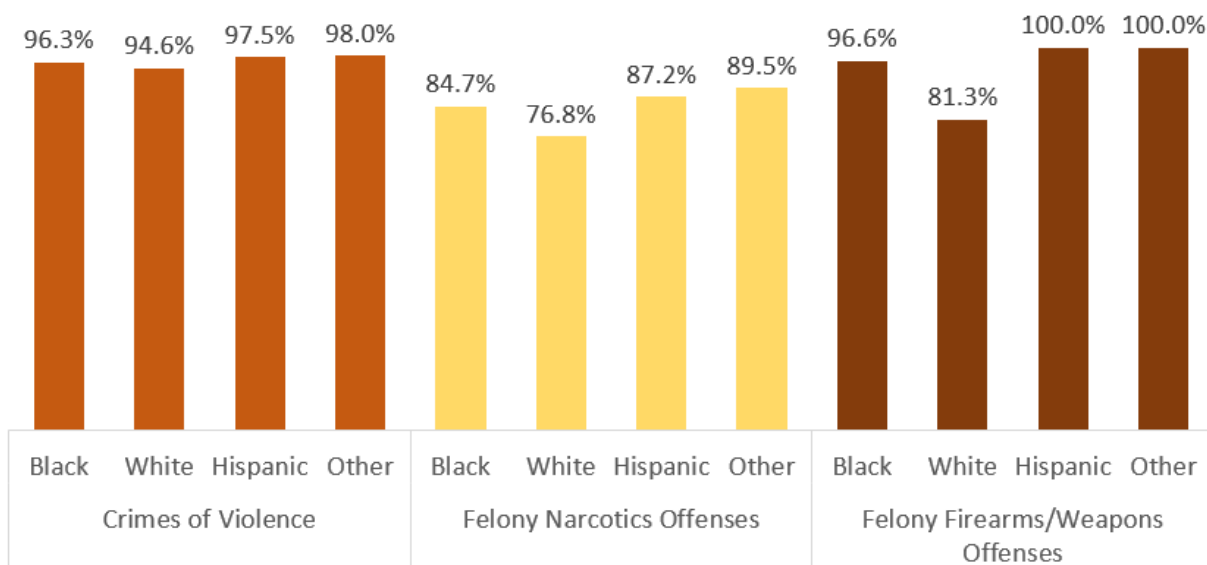
As Figure 16 illustrates, overall, Black and Hispanic guidelines-sentenced individuals were more likely than White and Other race guidelines-sentenced individuals to be incarcerated (80.4% and 80.4% versus 71.2% and 65.6%, respectively), though this difference is reduced when looking only at post-sentence incarceration (55.5% and 53.3% versus 52.0% and 42.6%, respectively), suggesting that some of the differences observed in incarceration rates may be attributed to higher rates of pre-sentence incarceration among Black and Hispanic individuals. Indeed, Black and Hispanic individuals were more likely than White and Other race individuals to serve pre-sentence incarceration (69.1% and 70.1% versus 54.4% and 55%, respectively (analysis not pictured)).



Note. This figure includes only guidelines individuals who were sentenced in Maryland circuit courts in CY 2018 – CY 2020.

Figure 17 illustrates incarceration rates by race for select offense categories—crimes of violence, felony narcotics offenses, and felony firearms/weapons offenses. Black, White, Hispanic, and Other race sentenced individuals had similar incarceration rates when the most serious offense committed was a crime of violence, while Black, Hispanic, and Other race individuals had higher incarceration rates when the most serious offense committed was a felony narcotics offense. Black, Hispanic, and Other race individuals were incarcerated at remarkably higher rates than White individuals for felony firearms/weapons offenses, a finding that was also confirmed in a separate study of Baltimore City Circuit Court cases. Notably, Johnson et al. (2022) came to a similar conclusion in their study of Baltimore City Circuit Court cases sentenced from 2017 to 2018. Johnson et al. (2022) found that, even after controlling for various factors including age, gender, offense severity and initial charges filed, Black sentenced individuals were incarcerated for firearms/weapons offenses at significantly higher rates than White sentenced individuals. The reasons for this difference are explored later in the report.

Figure 17. Incarceration Rates for Select Offense Categories by Race



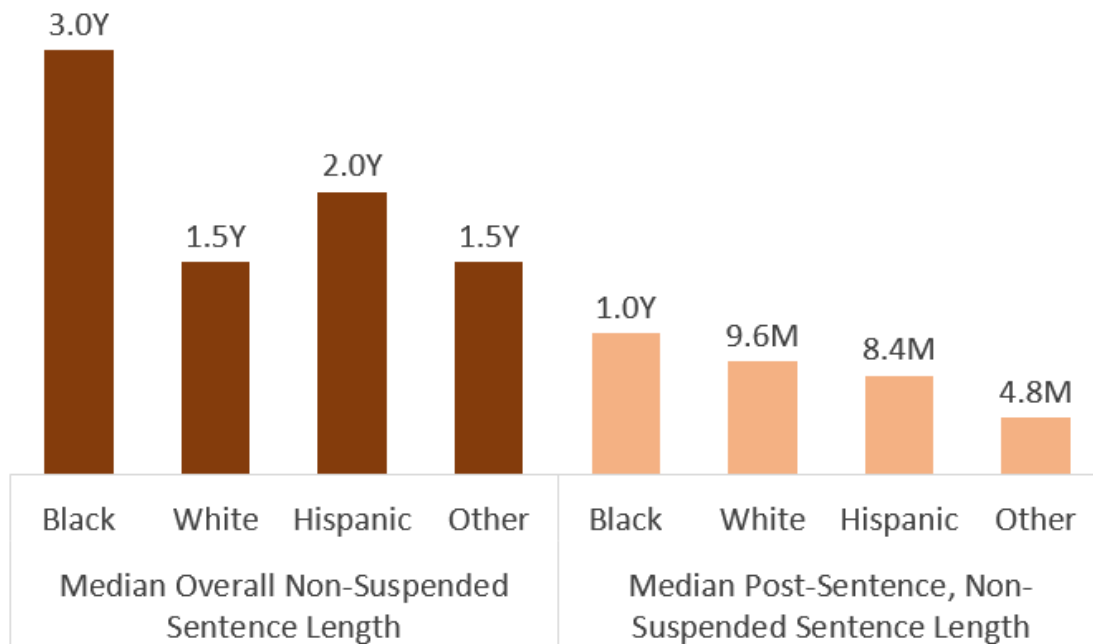
Note. This figure includes only guidelines individuals who were sentenced in Maryland circuit courts in CY 2018 – CY 2020.

Median Sentence Length: The sentencing guidelines provide a recommended range of non-suspended sentence lengths for eligible individuals sentenced in Maryland circuit courts. This subsection examines the average non-suspended sentence length by race and for select offense categories.¹⁶ The median value was selected to represent the average to minimize the impact of outliers (i.e., extreme sentences).

¹⁶ Median non-suspended sentence length by judicial circuit and race were also examined; however, it was concluded that these findings would not provide any meaningful insight into sentencing trends, as they do not control for differences in offense severity and criminal history across circuits. Offense severity and prior criminal history are predictors of sentence length. Therefore, this analysis was omitted from the report. This analysis is available upon request.

Figure 18 illustrates median non-suspended sentence lengths by race among sentenced individuals who were incarcerated. On average, Black guidelines individuals who were incarcerated received longer non-suspended sentences (median value=3 years) than Hispanic, White, and Other race individuals (median value=2 years, 1.5 years, and 1.5 years, respectively), though again this difference is reduced when looking at only post-sentence incarceration length (median value=1.0 year for Black individuals, 8.4 months for Hispanic individuals, 9.6 months for White individuals, and 4.8 months for Other race individuals). This finding reinforces the prior suggestion that pre-sentence detention may indirectly contribute to the observed racial differences in sentence length.

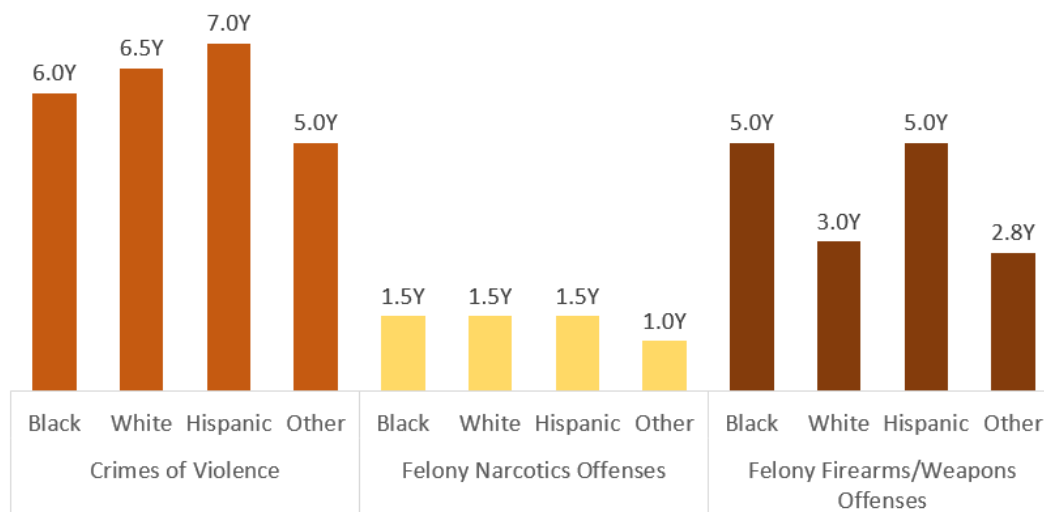
Figure 18. Median Non-Suspended Sentence Length by Race



Note. This figure includes only guidelines individuals who were sentenced in Maryland circuit courts in CY 2018 – CY 2020 to a period of incarceration.

Figure 19 illustrates median sentence lengths by race for select offense categories—again, crimes of violence, felony narcotics offenses, and felony firearms/weapons offenses.¹⁷ Overall individuals sentenced for crimes of violence and felony firearms or weapons offenses received the longest median non-suspended sentence lengths. The median non-suspended sentence for sentencing events in which the most serious offense was a felony narcotics drug offense was similar across racial groups (ranging from 1 year to 1.5 years), while the median non-suspended sentence length for sentencing events in which the most serious offense was a crime of violence was longest among Hispanic individuals and shortest among Other race individuals (7 years and 5 years, respectively). The longer average non-suspended sentence lengths observed among Hispanic individuals sentenced for crimes of violence, relative to those of other race categories, may be attributed to the finding that Hispanic guidelines individuals were more likely than those of other race categories to be sentenced during this time for more serious types of person offenses (see Figure 11).¹⁸

Figure 19. Median Non-Suspended Sentence Length for Select Offense Categories by Race



Note. This figure includes only guidelines individuals who were sentenced in Maryland circuit courts in CY 2018 – CY 2020 to a period of incarceration.

¹⁷ Median non-suspended sentence length by offense type (person, drug, property) and race were also examined, however it was concluded that these findings would not provide any meaningful insight into sentencing trends, as the categories of person, drug, and property offenses encompass offenses that vary widely in their severity. For instance, the offense seriousness categories for person offenses range from I to VII, and the statutory maximum penalties for person offenses range from less than one year to life. Therefore, this analysis was omitted from the report. The analysis is available upon request.

¹⁸ It is important to note that there is variation by race within these categories (e.g., crimes of violence, felony narcotic offenses, etc.) in terms of the specific offenses that are sentenced, and these offense-specific differences likely contribute to the observed differences in sentence lengths. The most common crimes of violence among Black sentenced individuals were: *Robbery* (a seriousness category IV offense); *Assault, 1st degree* (seriousness category III); and *Robbery with a dangerous weapon* (seriousness category III). The most common crimes of violence among White sentenced individuals were: *Assault, 1st degree*; *Robbery*; and *Robbery with a dangerous weapon*. The most common crimes of violence among Hispanic sentenced individuals were: *Child sexual abuse* (seriousness category II); *Assault, 1st degree*; and *Robbery*. The most common crimes of violence among Other race sentenced individuals were: *Assault, 1st degree*; *Robbery*; and *Child sexual abuse*.



The most striking difference in sentence lengths was observed for sentencing events in which the most serious offense was a felony firearms/weapons offense (Figure 19). The median non-suspended sentence length for felony firearms/weapons offenses was significantly higher among Black and Hispanic individuals (5 years) relative to White and Other race individuals (3 years and 2.8 years, respectively). This difference exists largely because Black and Hispanic individuals were more likely than White guidelines individuals sentenced during this time to be sentenced for felony firearms/weapons offenses involving mandatory minimum sentences, a finding that will be elaborated on in the next subsection of the report.

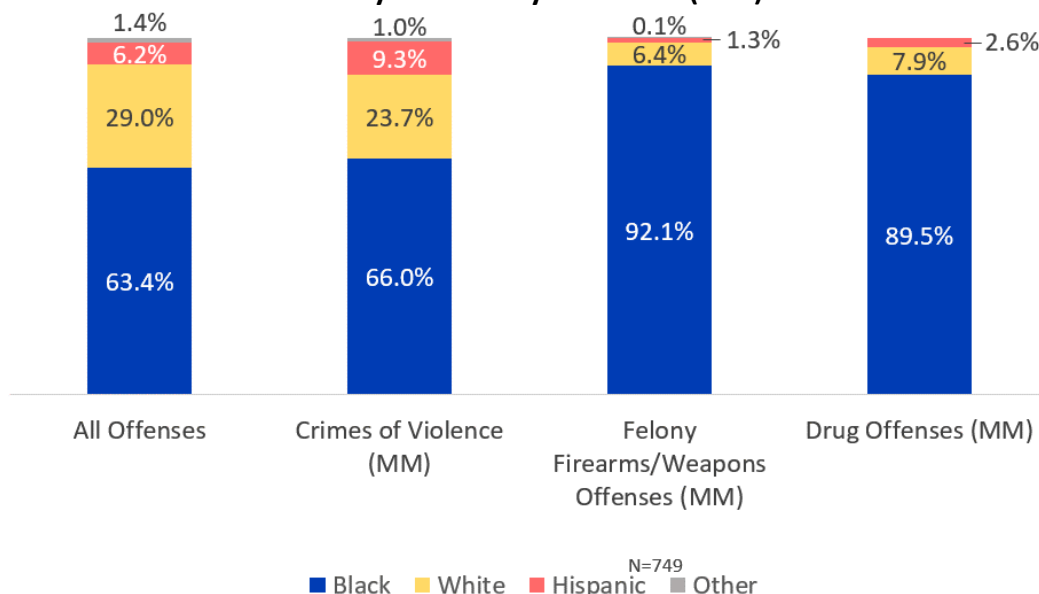
Mandatory Minimum Offenses: Mandatory minimum offenses are offenses with statutorily mandated periods of incarceration. When sentencing an individual for an offense that carries a mandatory minimum sentence, the court typically has no discretion and must impose the required minimum period of confinement. While the State has prosecutorial discretion when deciding whether to pursue a mandatory minimum, once an individual has been prosecuted and convicted of an offense with a mandatory minimum, the sentencing judge must typically impose the required term.¹⁹ This subsection of the report examines the race of individuals sentenced in Maryland circuit courts from 2018 through 2020 whose most serious offense carried a mandatory minimum. It finds that the vast majority of these mandatory minimum sentences involved Black individuals as opposed to White, Hispanic, or Other race individuals. Moreover, these patterns suggest that mandatory minimum sentences, and those for firearms/weapons offenses, may explain some of the observed racial differences in median sentence length.

¹⁹ The court may suspend the mandatory minimum sentence for a violation of PS, § 5-133(c) if, at the time of the offense, a period of more than 5 years has elapsed since the person completed serving the sentence for the most recent crime of violence or select drug crime conviction that disqualified them from possessing a firearm, including all imprisonment, mandatory supervision, probation, and parole.



As illustrated in Figure 20, Black individuals composed most guidelines individuals sentenced for crimes of violence, felony firearms/weapons offenses, and drug offenses that carry mandatory minimums. Black sentenced individuals composed approximately 66% of all individuals sentenced for crimes of violence that carry mandatory minimum sentences, 90% of individuals sentenced for drug offenses that carry mandatory minimum sentences, and 92% of individuals sentenced for felony firearms/weapons offenses that carry mandatory minimum sentences. The felony firearms/weapons offenses category here includes all violations of Public Safety Article (PS), § 5-133(c), though the mandatory minimum sentence may be suspended if, at the time of the offense, a period of more than 5 years has elapsed since the person completed serving the sentence for the most recent crime of violence or select drug crime conviction that disqualified them from possessing a firearm, including all imprisonment, mandatory supervision, probation, and parole.

Figure 20. Race of Individuals Sentenced for All Offenses Versus Offenses that Carry Mandatory Minimum (MM) Sentences²⁰



Note. This figure includes only guidelines individuals who were sentenced in Maryland circuit courts in CY 2018 – CY 2020. The mandatory minimum figures include only those individuals whose most serious offense carried a mandatory minimum sentence.

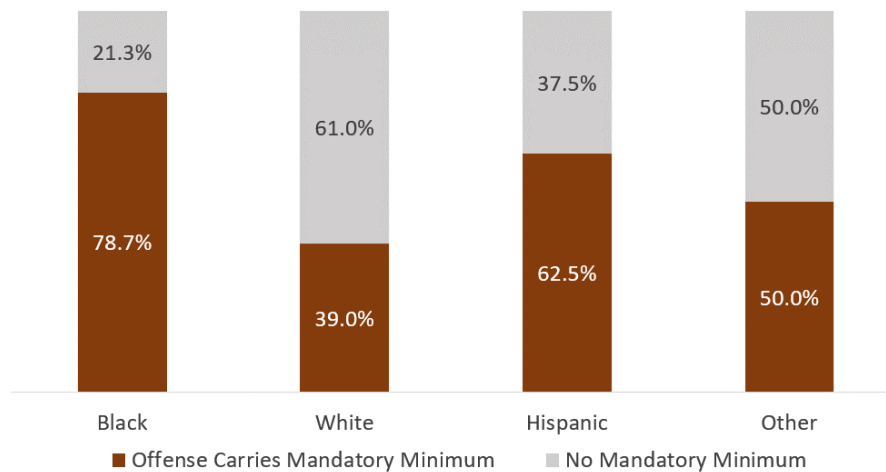
This difference between sentences for Black individuals versus individuals of all other race categories for offenses that carry mandatory minimums is even more stark when compared to *all* guidelines-sentenced individuals. Recall that between 2018 and 2020, Black individuals composed 63.4% of all guidelines-eligible sentencing events (Figure 1). That percentage, 63.4%, is small in comparison to the percentage of Black individuals sentenced for offenses that carry mandatory minimums, particularly firearms/weapons offenses (92.1%).

²⁰ See Appendix B for a complete list of crimes of violence, felony firearms/weapons offenses, and drug offenses that carry mandatory minimum sentences.



Felony firearms/weapons offenses appear to play a significant role in driving the observed racial differences in sentences for offenses that carry mandatory minimums and, in turn, a significant role in driving broader sentencing differences. This report already addressed the racial difference in average non-suspended sentence lengths for firearms/weapons offenses in Figure 19. From 2018 to 2020, the median sentence for felony firearms/weapons offenses was 5 years for Black and Hispanic guidelines individuals, 3 years for White individuals, and 2.8 years for Other race individuals. This difference appears to be because the two most common offenses under this category for which Black and Hispanic individuals were sentenced carry mandatory minimum sentences of 5 years, whereas the most common offenses for which White individuals were sentenced do not carry mandatory minimum sentences.²¹ As Figure 21 illustrates, 78.7% of sentences for Black individuals and 62.5% of sentences for Hispanic individuals sentenced for felony firearms/weapons offenses involved mandatory minimum sentences, whereas only 39% of sentences for White individuals and 50% of sentences for Other race individuals involved mandatory minimum sentences. Even after excluding the firearms/weapons offenses with statutorily required mandatory minimum penalties, the Black-White and Hispanic-White differences in sentence length persist for firearms/weapons offenses, though they are reduced.²²

Figure 21. Race of Individuals Sentenced for Felony Firearms/Weapons Offenses that Carry Mandatory Minimum (MM) Sentences



Note. This figure includes only guidelines individuals who were sentenced in Maryland circuit courts in CY 2018 – CY 2020 and whose most serious offense was a felony firearms/weapons offense.

²¹ For Black guidelines-sentenced individuals, the most common felony firearms/weapons offenses were *Possession of a firearm after a crime of violence or select drug crimes* (Public Safety Article (PS), § 5-133(c)), and *Possess, use, wear, carry, or transport a firearm in a drug offense, 1st offense*, (CR, § 5-621(b)), both of which carry 5-year mandatory minimum sentences. For White guidelines-sentenced individuals, the most common felony firearms/weapons offense was *Possession of a rifle or shotgun after having been convicted of a crime of violence or select drug crime* (PS, § 5-206).

²² Excluding offenses that carry mandatory minimum sentences, the median sentence length for guidelines-individuals sentenced for felony firearms/weapon offenses was 1.5 years for Black individuals, 1 year for White individuals, 1.2 years for Hispanic individuals, and 0.6 years for Other race individuals.



Life-Eligible Offenses: Certain offenses in Maryland carry the possibility of life imprisonment (i.e., life-eligible offenses). These offenses include:

- Murder, 1st degree,
- Rape, 1st degree,
- Sex Offense, 1st degree, and
- attempts at these offenses.²³

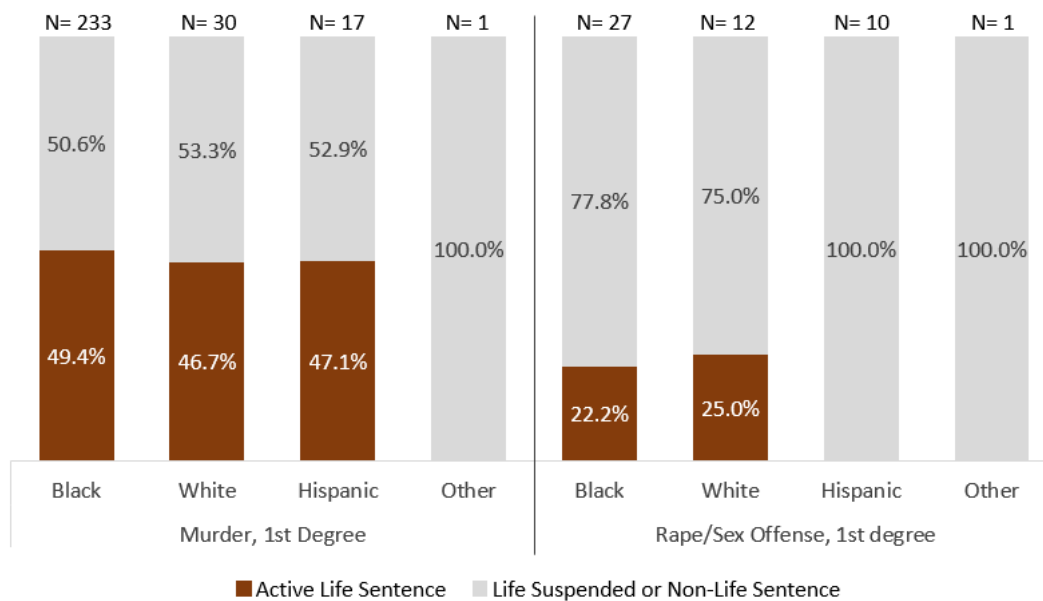
When the statutory maximum penalty for an offense is life, an individual sentenced for that offense may be sentenced to an active life sentence, a life sentence with some portion suspended, or a non-life sentence.²⁴ An active life sentence refers to a life sentence with no time suspended.

Figure 22 (shown on the next page) illustrates the total number of individuals convicted of life-eligible offenses and the percentage of life-eligible sentencing events in which an active life sentence was imposed by offense and race. As Figure 22 illustrates, similar percentages of Black, Hispanic, and White individuals received an active life sentence for *Murder, 1st degree* (including attempts) (49.4%, 47.1%, and 46.7%, respectively), while no Other race individual received a life sentence for *Murder, 1st degree*. Similar percentages of Black and White individuals received an active life sentence for *Rape, 1st degree* (including attempts) (22.2% and 25.0%, respectively), while no Hispanic or Other race individual received a life sentence for *Rape, 1st degree* (including attempts).

²³ *Sex offense, 1st degree*, was reclassified as *Rape, 1st degree*, effective October 1, 2017 (Chapters 161 and 162 of the 2017 Laws of Maryland). *Sex offense, 1st degree*, may still appear in the sentencing guidelines data with a sentence date on or after October 1, 2017, if the offense was committed prior to October 1, 2017.

²⁴ Per CR, § 2-201, *Murder, 1st degree*, individuals sentenced for this offense shall be sentenced to life imprisonment, a portion of which may be suspended. Therefore, an individual sentenced for *Murder, 1st degree*, cannot receive a non-life sentence. Individuals sentenced for any of the other life-eligible offenses may receive a non-life sentence unless another provision of law requires a mandatory minimum sentence of life.

Figure 22. Percentage of Individuals Who Received Active Life Sentences for Life-Eligible Offenses by Race



Note. This figure and corresponding table include only guidelines individuals who were sentenced for life-eligible offenses in Maryland circuit courts in CY 2018 – CY 2020. The figure combines attempts with completed offenses.

Taken together, the findings regarding incarceration rates, median sentence length, offenses that carry mandatory minimums, and life-eligible offenses, indicate that there are differences in sentencing trends across races. Some of these differences may be attributed to individuals' criminal history and offense severity. Black guidelines-sentenced individuals were more likely than individuals of all other race categories to have lengthier and more serious prior criminal records. Black guidelines-sentenced individuals were also more likely than individuals of all other race categories to be sentenced for person offenses involving the presence of a firearm. Both Black and Hispanic guidelines-sentenced individuals were more likely than White and Other race individuals to be sentenced for the most serious offenses. The sentencing guidelines were designed to reduce disparities, including racial disparities, by recommending sentence lengths based on an individual's prior criminal record and offense severity—two factors considered relevant by Maryland judges to the sentence decision. One question to ask is whether the observed racial differences in sentences still exist after controlling for criminal history and offense seriousness. The next section of the report explores how the sentencing guidelines may reduce differences in sentencing outcomes.

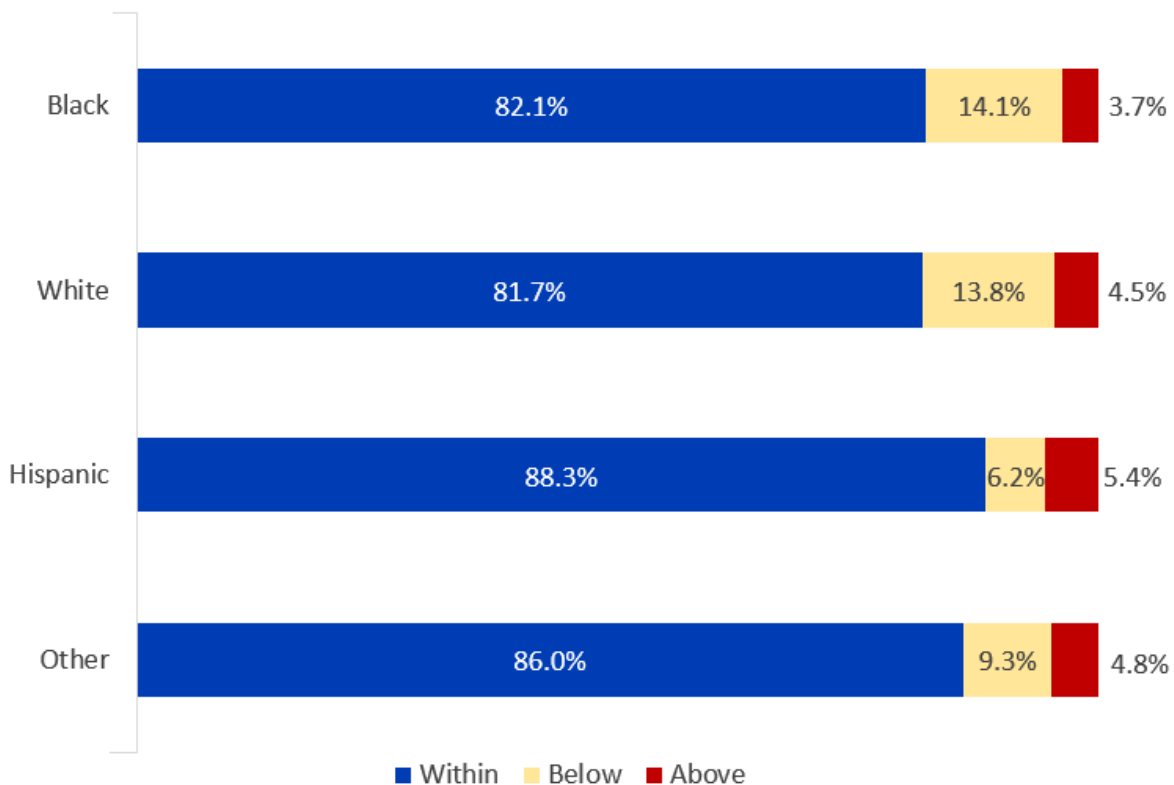
Sentencing Guidelines Compliance: Reviewing compliance with the sentencing guidelines is one of the Commission's primary responsibilities. At its inception, the Commission adopted the goal of 65% as the benchmark standard for sentencing guidelines compliance.²⁵ Ideally, 65% or more

²⁵ In 1991, the Sentencing Guidelines Revision Committee of the Judiciary's Guidelines Advisory Board (the group in charge of maintaining the State's sentencing guidelines prior to the inception of the MSCCSP in 1999) established an expectation that two-thirds of sentences should fall within the recommended sentencing range, and that when

of guidelines sentences imposed will fall within the recommended guidelines range or meet one of the other criteria for compliance.²⁶ To the extent that guidelines compliance is at or above 65%, this indicates that the majority of guidelines individuals sentenced during that time were sentenced based on factors considered by judges relevant to the sentencing decision—specifically, the individual’s criminal history and offense severity. This subsection reviews sentencing guidelines compliance by race and several key variables, including judicial circuit disposition type, and offense type. This section concludes with a discussion and analysis of the sentencing guidelines midpoint and how it may be used to evaluate differences in sentencing. Overall, the findings in this section suggest that racial differences in sentencing are reduced in the presence of sentencing guidelines.

As Figure 23 illustrates, overall sentencing guidelines compliance rates were high across racial categories. When departures occurred, below departures were typically more common than above departures, though overall below and above departure rates were similar for Hispanic individuals (6.2% and 5.4%, respectively).

Figure 23. Sentencing Guidelines Compliance by Race



Note. This figure includes only guidelines-eligible sentencing events disposed of in Maryland circuit courts in CY 2018 – CY 2020.

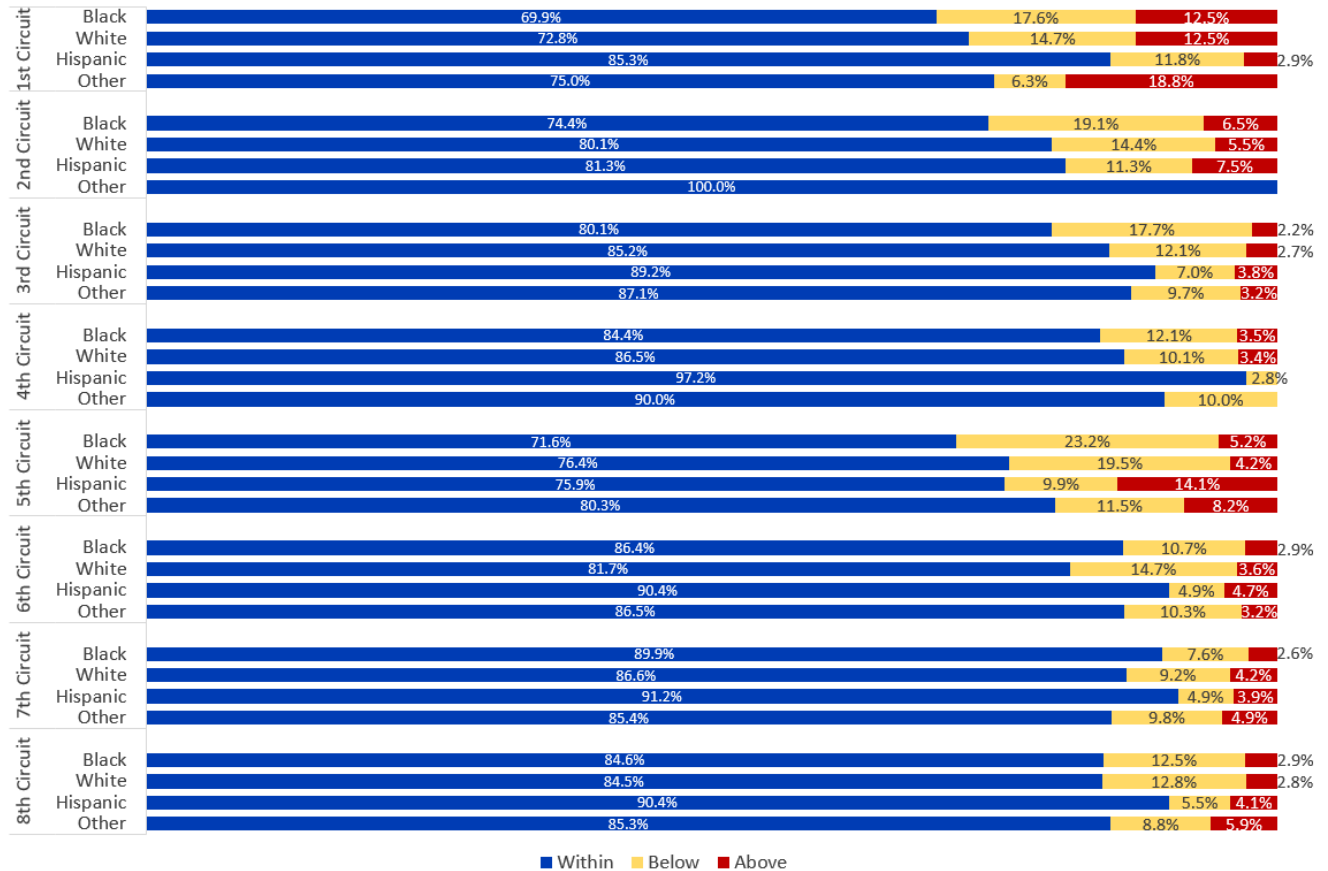
sentencing practices resulted in departures from the recommended range in more than one-third of the cases, guidelines revisions should be considered. Based on this previously adopted policy, the Commission adopted the goal of 65% as the benchmark standard for sentencing guidelines compliance.

²⁶ See *Sentencing Factors Considered* for the complete definition of guidelines compliance.



Compliance rates were consistently high across racial groups and judicial circuit as well (Figure 24), with below departure rates generally exceeding above departure rates, though there were exceptions. The above departure rate exceeded the below departure rate for Other race individuals in the 1st Circuit and Hispanic individuals in the 5th Circuit.²⁷

Figure 24. Sentencing Guidelines Compliance by Judicial Circuit and Race



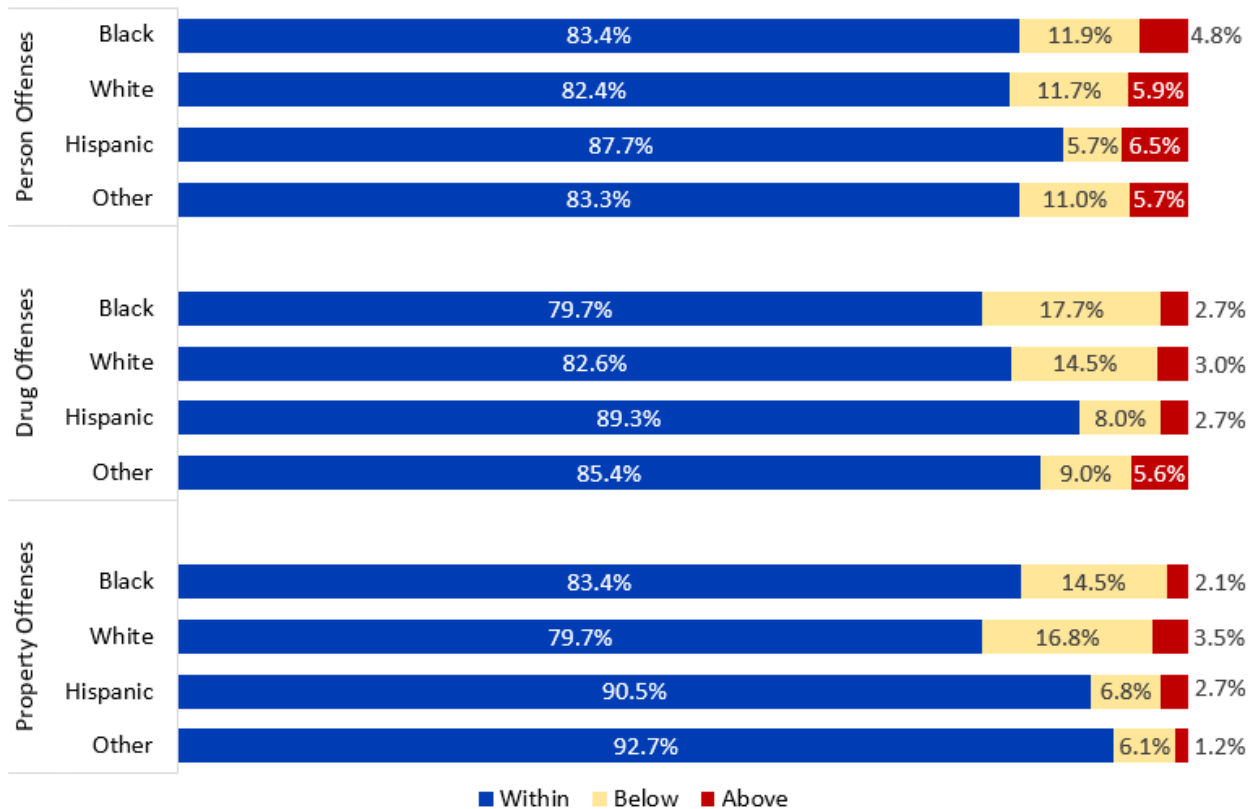
Note. This figure includes only guidelines-eligible sentencing events disposed of in Maryland circuit courts in CY 2018 – CY 2020.

²⁷ It is important to note that an analysis of compliance rates by judicial circuit and race results in small numbers for some categories. For example, there were only 16 sentencing events involving Other race individuals in the 1st Circuit. Small numbers limit the ability to provide meaningful interpretation.



Compliance rates were high across racial groups and offense type, with one notable exception (Figure 25). Above departures were slightly more common than below departures among Hispanic individuals whose most serious offense was a person offense (6.5% versus 5.7%, respectively).

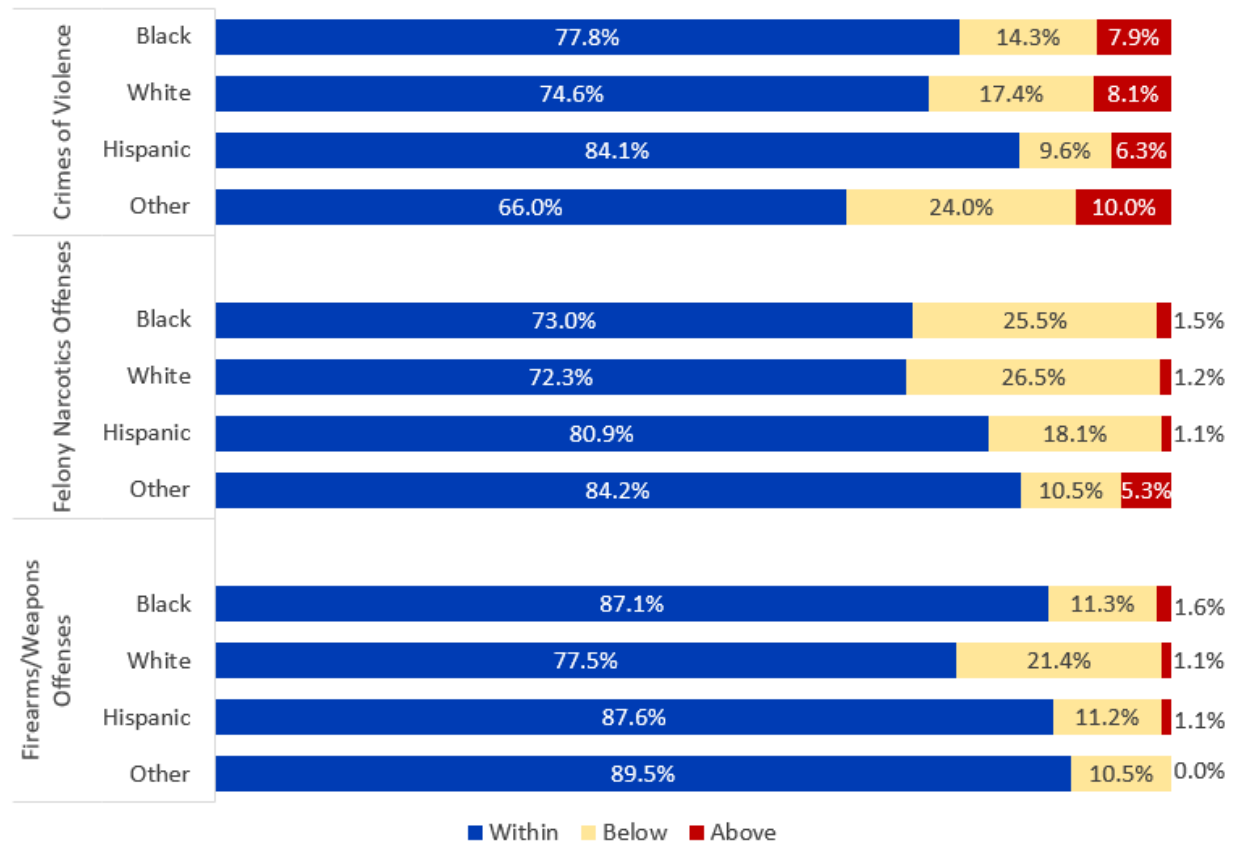
Figure 25. Sentencing Guidelines Compliance by Offense Type and Race



Note. This figure includes only guidelines-eligible sentencing events disposed of in Maryland circuit courts in CY 2018 – CY 2020.

Looking at some of the more common offenses, including crimes of violence, felony narcotics offenses, and felony firearms/weapons offenses (Figure 26), compliance rates again exceeded the benchmark standard of 65% in every category.

Figure 26. Sentencing Guidelines Compliance for Select Offense Categories by Race



Note. This figure includes only guidelines-eligible sentencing events disposed of in Maryland circuit courts in CY 2018 – CY 2020.

Sentencing guidelines compliance rates varied across disposition types, more so than across any other category (Figure 27). The difference in guidelines compliance rates between cases resolved via plea agreements versus trials is particularly striking.

Recall that the MSCCSP classifies disposition type in five categories: ABA or MSCCSP binding plea agreement, other plea agreement, plea-no agreement, bench trial, and jury trial. Sentences that result from ABA or MSCCSP binding plea agreements are always defined as guidelines-compliant; therefore, the compliance rate always equals 100% for this category.²⁸ Sentences that result from an other plea agreement or a plea-no agreement, exceeded the benchmark compliance standard across individuals of every race. Below departures were more

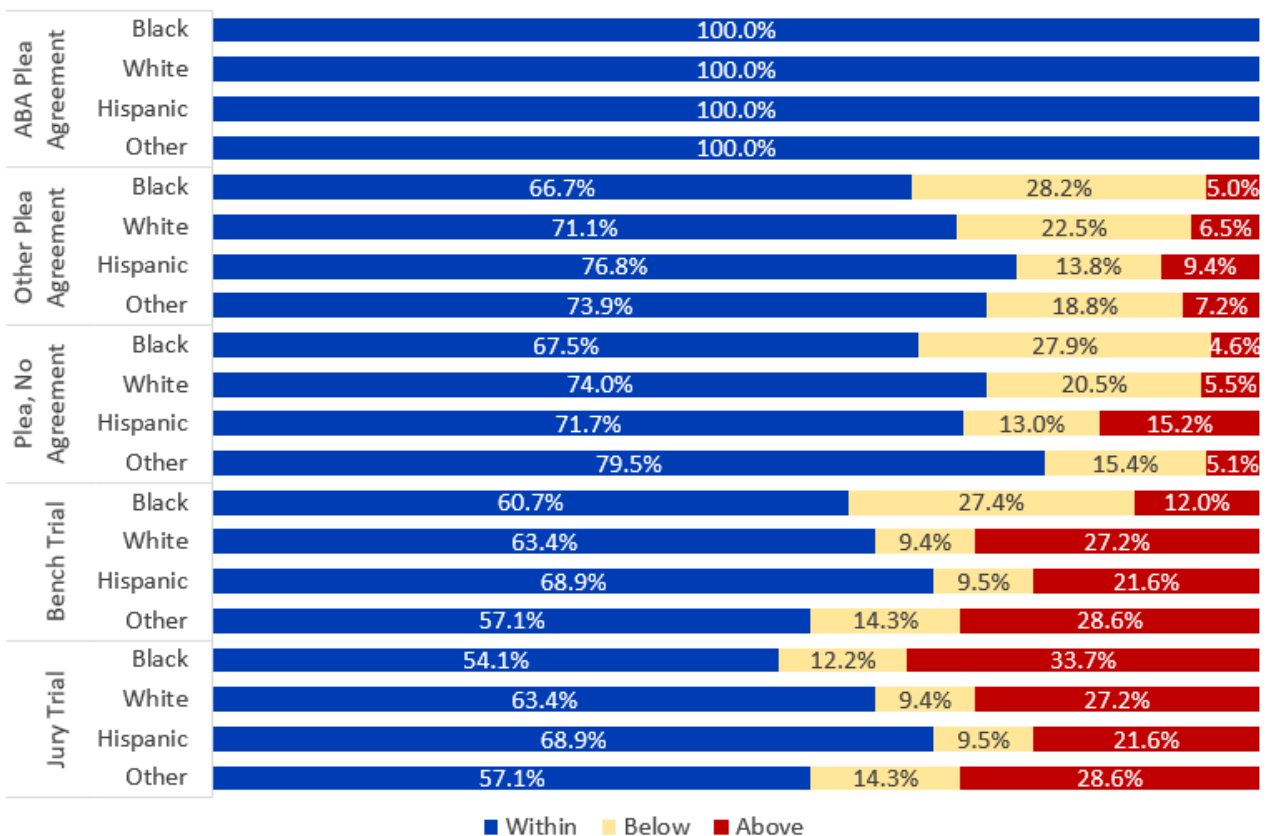
²⁸ By rule, the MSCCSP has defined all sentences that result from ABA or MSCCSP binding plea agreements as guidelines compliant, regardless of sentence length. The MSCCSP adopted the ABA plea agreement compliance policy in 2001 to acknowledge that ABA plea agreements reflect the consensus of the local view of an appropriate sentence within each specific community.



common than above departures in all but one category of cases disposed of via other plea agreements and plea-no agreement. The above departure rate was greater than the below departure rate for Hispanic individuals whose cases were disposed of via a plea-no agreement.

In contrast to sentences that result from plea agreements, sentences that result from bench or jury trials were more likely to depart from the guidelines. Only two groups of sentenced individuals sentenced via bench or jury trials had a compliance rate that met the 65% benchmark. When departures occurred, above departures were more common than below departures for all but one group of individuals sentenced via bench or jury trials.

Figure 27. Sentencing Guidelines Compliance by Disposition Type and Race



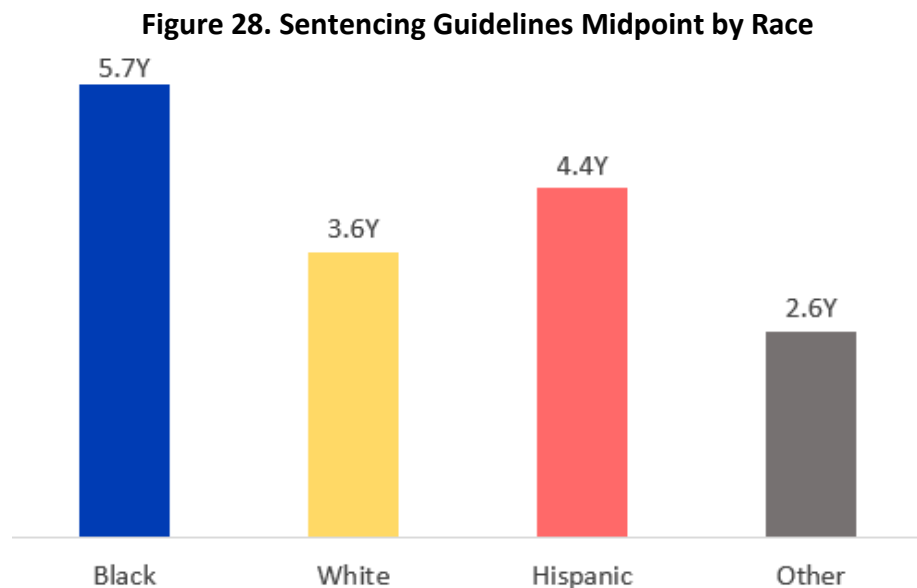
Note. This figure includes only guidelines-eligible sentencing events disposed of in Maryland circuit courts in CY 2018 – CY 2020.

Sentence as a Percentage of the Guidelines Midpoint: The guidelines midpoint is the midpoint between the lower and upper limits of the individual's recommended sentence length range.²⁹ The guidelines midpoint can be viewed as the typical sentence for an individual assigned that particular guidelines range. Like sentencing guidelines compliance, this measure provides a useful reference to compare guidelines-sentenced individuals, while controlling for their criminal history and offense severity.

²⁹ The guidelines midpoint cannot be calculated for events in which the lower guidelines limit is the same as the upper guidelines limit (e.g., the range is 5 years to 5 years or Probation to Probation) or events in which the lower guidelines limit or upper guidelines limit is missing.

Recall from Figures 16 and 18 that Black and Hispanic guidelines individuals, on average, were incarcerated at higher rates and received longer sentences than White or Other race individuals. These findings were explained, at least in part, by the individuals' prior criminal history and the seriousness of the current offense. Black guidelines individuals were more likely than individuals of all other race categories to have a more extensive and more serious prior criminal record. Black guidelines-sentenced individuals were more likely than individuals of all other race categories to be sentenced for person offenses involving the presence of a firearm. Both Black and Hispanic individuals were more likely than White or Other race individuals to be sentenced for serious offenses. An individual's criminal history and current offense severity, in turn, determine the individual's recommended guidelines range. Given the observed trends in criminal history and offense severity, one might expect that the guidelines, on average, would be higher for Black and Hispanic individuals. Higher recommended guidelines ranges may, in turn, explain part of the observed differences in sentence length between Black and Hispanic versus White and Other race guidelines-sentenced individuals. Indeed, this is exactly what Figures 28 through 30 illustrate.

As displayed in Figure 28, Black guidelines-sentenced individuals had the highest mean guidelines midpoint (5.7 years), followed by Hispanic, White, and Other race individuals (4.4 years, 3.6 years, and 2.6 years, respectively). This finding indicates that, on average, the recommended sentence length for Black individuals is longer relative to individuals of all other race categories. Examining the sentence as a percentage of the guidelines midpoint provides further insight into sentencing.



Note. This figure includes only guidelines individuals who were sentenced in Maryland circuit courts in CY 2018 – CY 2020.

The sentence as a percentage of the guidelines midpoint is similar to the sentencing guidelines compliance rate in that it allows one to compare where one group of individuals, compared to another group, was sentenced relative to their guidelines. Both measures also control for



offender score and offense characteristics. However, the sentence as a percentage of the guidelines midpoint also allows one to compare exactly where in the recommended guidelines range guidelines individuals are being sentenced.³⁰ In contrast to compliance rates, the sentence as a percentage of the guidelines midpoint considers only the individual's non-suspended sentence length and does not consider other factors included in the definition of guidelines compliance, like disposition type or corrections options.

Take the following example:

- Person A had a recommended guidelines range of 2 years to 8 years. The midpoint in that range is 5 years. Person A received a non-suspended sentence length of 3 years. Three years is 60% of the guidelines midpoint of 5 years.
- Person B had a recommended guidelines range of 1 year to 3 years. The midpoint in that range is 2 years. Person B received a non-suspended sentence length of 3 years. Three years is 150% of the guidelines midpoint of 2 years.

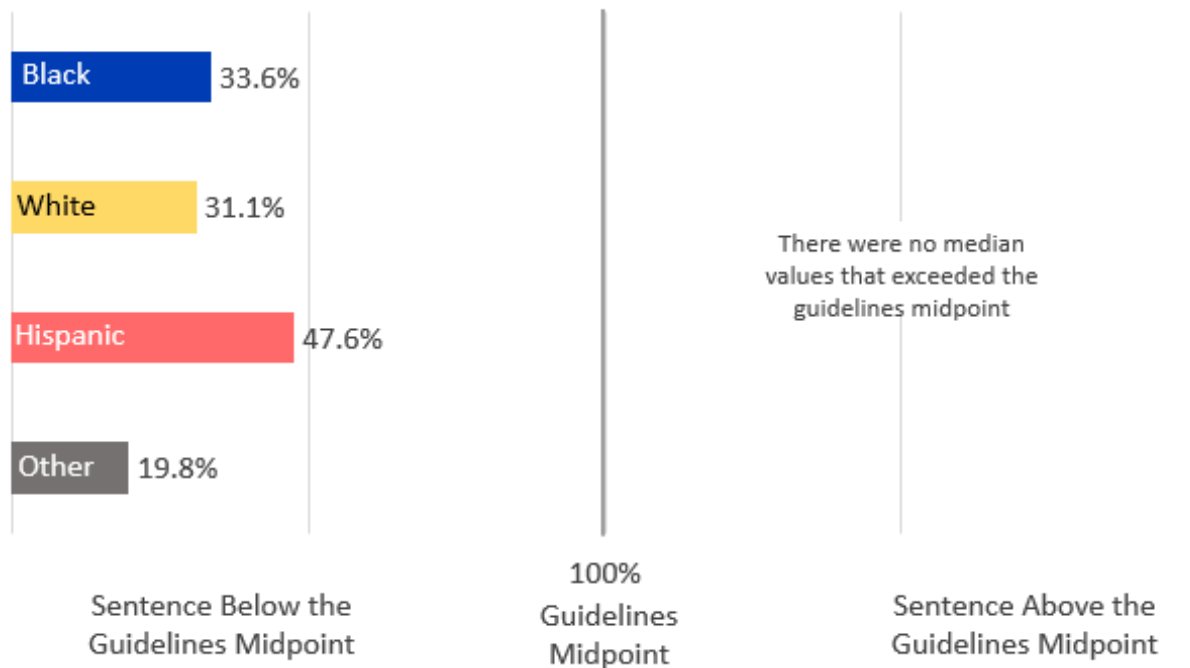
While both individuals received the same sentence (3 years) and both sentences would be deemed within the guidelines, Person B's sentence was higher relative to their guidelines-recommended sentence than Person A's sentence. If one group is more likely than another to be sentenced towards the upper end or above their guidelines, that indicates a possible disparity in sentencing.

³⁰ The non-suspended sentence as a percentage of the guidelines range midpoint cannot be calculated for events in which the lower guidelines limit is the same as the upper guidelines limit or events in which the lower guidelines limit, upper guidelines limit, or non-suspended sentence is missing.



As Figure 29 illustrates, there was considerable similarity among Black and White individuals in the median value of the non-suspended sentence as a percentage of the guidelines range midpoint. Conversely, the median value was higher among Hispanic individuals (47.6%) relative to Black, White, and Other race individuals (33.6%, 31.1%, and 19.8%, respectively). This finding indicates that Hispanic individuals were more likely than individuals of other race categories to have received a non-suspended sentence towards the high end, or even above, their recommended guidelines range.³¹

Figure 29. Median Value of the Sentence as a Percentage of the Guidelines Range Midpoint by Race

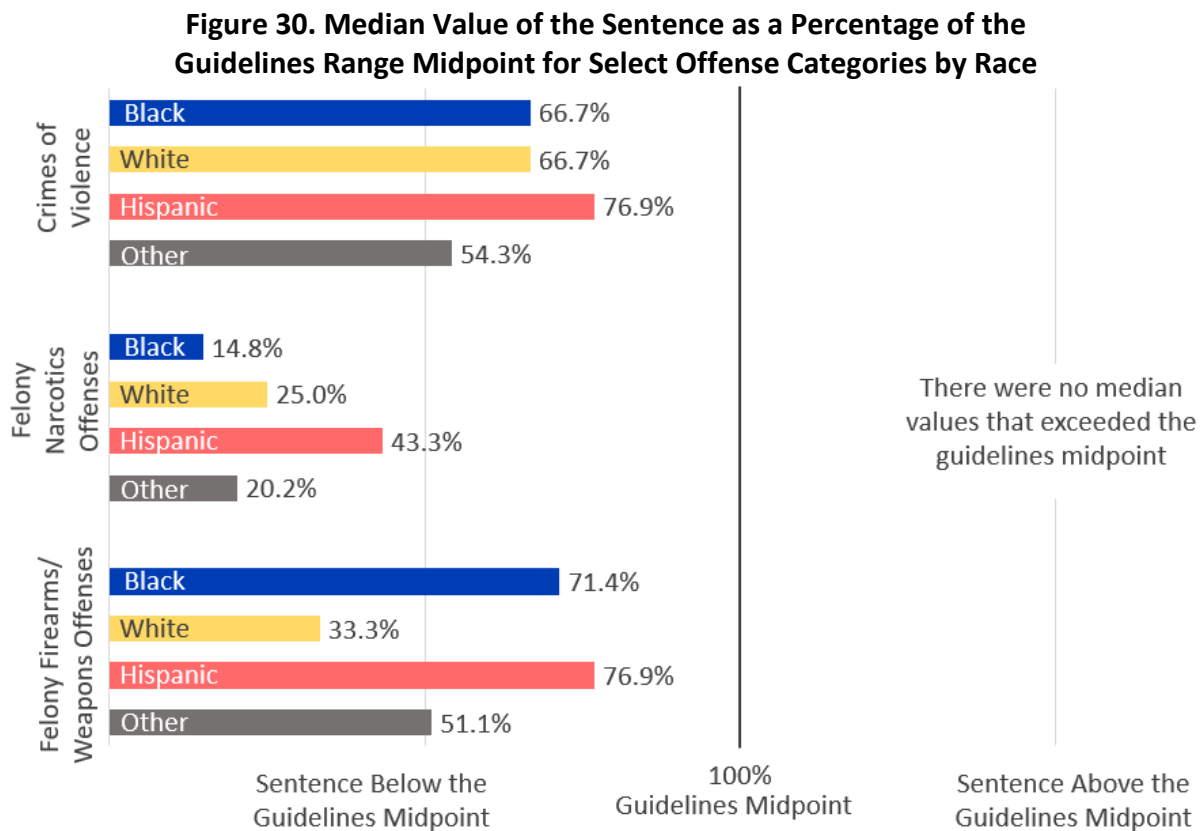


Note. This figure includes only guidelines individuals who were sentenced in Maryland circuit courts in CY 2018 – CY 2020.

The relatively high value observed among Hispanic individuals relative to others may be due, in part, to the fact that Hispanic individuals are more likely than other individuals to have no prior criminal record but to be sentenced for relatively serious offenses. Approximately 17.6% of Hispanic individuals scored zero points on the offender score (indicating no or a minimal prior adult criminal record) and were sentenced for the most serious offenses (i.e., seriousness category I, II, or III offenses), versus 7.1% of White individuals, 7.5% of Black individuals, and 11.1% of Other race individuals. It is possible that judges are sentencing higher within the guidelines for some Hispanic individuals to account for the severity of their instant offense relative to the individual's prior criminal record.

³¹ While the reported finding regarding Hispanic sentenced individuals is notable, it should be interpreted with caution given that Hispanic individuals make up a relatively small percentage (6.2%) of all guidelines-eligible sentencings and may be underreported in the sentencing guidelines data (see Footnote 4).

Figure 30 illustrates the median sentence as a percentage of the guidelines midpoint for sentencing events involving crimes of violence, felony narcotics offenses, and felony firearms/weapons offenses. Consistent with earlier findings, the median values for crimes of violence were higher among Hispanic individuals relative to Black, White, and Other race individuals (76.9% versus 66.7%, 66.7%, and 54.3%, respectively).³² The median values for felony narcotics offenses were also higher among Hispanic individuals relative to Black, White, and Other race individuals (43.3% versus 14.8%, 25.0%, and 20.2%, respectively). The median values for felony firearms/weapons offenses were higher among Black and Hispanic individuals relative to White and Other race individuals (71.4% and 76.9% versus 33.3% and 51.1%, respectively).³³



Note. This figure includes only guidelines individuals who were sentenced in Maryland circuit courts in CY 2018 – CY 2020.

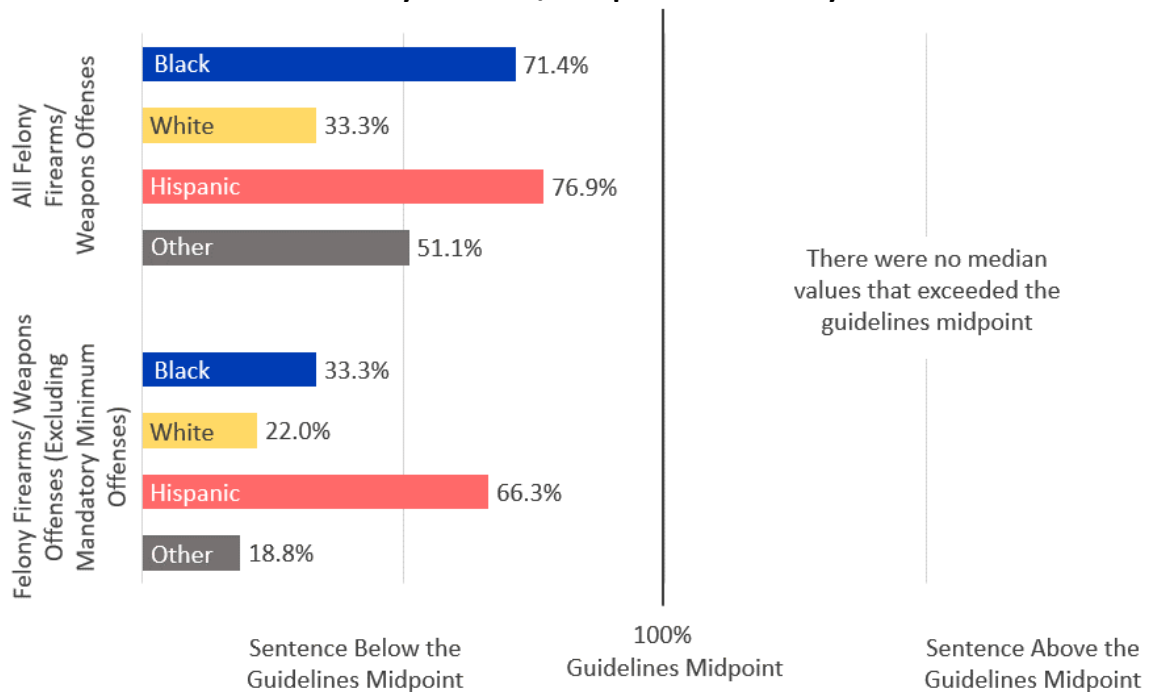
Again, the relatively high values observed among Hispanic individuals relative to others may be due, in part, to the fact that Hispanic individuals are more likely than other individuals to have

³² The differences in sentences for Hispanic individuals are likely due to the types of crimes of violence for which they are sentenced. Nearly half (47.4%) of crime of violence sentencings among Hispanic individuals involved sex offenses, while only 8.5% of crime of violence sentencings among Black individuals, 22.2% of crime of violence sentencings among White individuals, and 30% of crime of violence sentencings among Other race individuals involved sex offenses.

³³ It should be noted that Hispanic individuals represent a particularly small sample size for the felony narcotics and felony firearms/weapons offense categories, representing 2.2% and 1.6% of those sentencings, respectively.

no prior criminal record but to be sentenced for relatively serious offenses, particularly crimes of violence.³⁴ The higher median values for felony firearms/weapons offenses among Black and Hispanic individuals were largely due to the application of mandatory minimum sentences and their impact on the guidelines. When the lower or upper limit of the calculated guidelines range falls below the mandatory minimum for an offense, the lower and/or upper limits are replaced with the mandatory minimum. For instance, if the guidelines for a felony firearms/weapons offense are calculated, based on the individual's offender and offense scores, to be 4 years to 8 years, but the offense carries a 5-year mandatory minimum sentence, the lower end of the range would be replaced with the mandatory minimum sentence, and the guidelines range would become 5 years to 8 years. In many instances involving mandatory minimum offenses, the lower end of the guidelines is replaced with the mandatory minimum, making a below the guidelines departure impossible, and thus increasing the value of the sentence as a percentage of the guidelines midpoint. When firearms/weapons offenses involving mandatory minimums are excluded from the analyses (Figure 31), the median values of the sentence as a percentage of the guidelines midpoint for felony firearms/weapons offenses are much closer in range across Black, White, and Other race individuals (33.3%, 22.0%, and 18.8%, respectively), though the value for Hispanic individuals remains the highest (66.3%).

Figure 31. Median Value of the Sentence as a Percentage of the Guidelines Range Midpoint for Felony Firearms/Weapons Offenses by Race



Note. This figure includes only guidelines individuals who were sentenced in Maryland circuit courts in CY 2018 – CY 2020.

³⁴ To the extent that Hispanic individuals are more likely to be recent immigrants, it is possible they may not have accumulated a criminal record in the United States. It is also possible that Hispanic individuals are less likely to accumulate an official criminal record due to decisions to drop cases involving minor offenses to avoid deportation/immigration issues. Further research is needed to explore these possibilities.



CONCLUSIONS AND RECOMMENDATIONS

The findings in this report indicate that there were racial differences in sentencing trends across guidelines individuals sentenced from CY 2018 through CY 2020. Black and Hispanic guidelines-sentenced individuals were more likely than White and Other race individuals to be incarcerated and to be incarcerated for longer periods of time. The current analysis suggests that much of this difference may be attributed to individuals' criminal history and offense severity. Black guidelines individuals were more likely than individuals of all other race categories to have a more extensive and more serious prior criminal record. Black guidelines-sentenced individuals were more likely than individuals of all other race categories to be sentenced for person offenses involving the presence of a firearm. Both Black and Hispanic guidelines-sentenced individuals were more likely than White and Other race individuals to be sentenced for the most serious offenses. However, when individuals' criminal history and offense severity—two factors considered by judges relevant to the sentencing decision—were accounted for, differences between races were generally reduced, though not eliminated. This reduction was evidenced by findings of similar sentencing guidelines compliance rates and similar median sentences as a percentage of the guidelines midpoint across races, with the exception being higher values for the median sentence as a percentage of the guidelines midpoint among Hispanic individuals. The sentencing guidelines in Maryland were designed to reduce disparities, including racial disparities, by recommending sentence lengths based on factors considered relevant by judges to the sentencing decision. To this extent, the Maryland sentencing guidelines largely appear to be achieving their purpose. While the sentencing guidelines appear to be achieving their purpose, there is a need for a more comprehensive study of the criminal justice system, particularly of the stages that occur prior to sentencing (e.g., arrest, bail, and charging decisions).

The recommendations are divided into two parts. The first part focuses on actions the MSCCSP can address. The second part focuses on recommendations that other State agencies, State legislators, or other decision-makers may consider. It should be noted that the disproportionate racial composition of guidelines-eligible sentenced individuals is present before sentencing. In other words, societal factors, arrest practices, charging decisions, pre-sentence detention, and other additional factors impact racial and ethnic differences before an individual is sentenced. These additional factors are outside the scope of the sentencing judge and that of the Sentencing Commission, but the MSCCSP can and should continue to work to ensure that individuals are treated fairly at sentencing. Specifically, the MSCCSP should assess whether additional actions may be taken with respect to the sentencing guidelines to ensure racial equity considering pre-sentencing differences between races. Accordingly, the MSCCSP should consider the following recommendations to improve equal justice through its own research and policy decisions.



Recommended Actions for the MSCCSP

1. **Analyze the impact of revisions to the sentencing matrices for drug and property offenses after sufficient data have been collected.** The sentencing guidelines matrices for drug and property offenses were amended effective July 1, 2022. The MSCCSP should plan to assess the impact of these revisions with respect to differences in sentencing by race and ethnicity. It is anticipated that this analysis can be completed in 2026 after three full years of data have been collected and reviewed.
2. **Educate prosecutors, defense attorneys, judges, court staff, and Parole and Probation agents about guidelines rules for scoring prior juvenile delinquency and prior adult criminal records that involve an adjudication that is based on an act that is no longer criminal.** The MSCCSP should emphasize through training and other forms of communication (e.g., Guidelines E-News, updates to the Maryland Sentencing Guidelines Manual) that juvenile delinquency and prior adult criminal record calculations should not include adjudications for offenses that are no longer criminal acts in the Maryland Code. In particular, the educational campaign should emphasize that possession of 2.5 ounces or less of cannabis is decriminalized in Maryland, effective January 1, 2023. Given that Black individuals have an increased likelihood of arrest for cannabis possession (American Civil Liberties Union, 2020), the MSCCSP should work to reduce the impact of disproportionate cannabis-related criminal justice activity by emphasizing that prior cannabis possession convictions involving 2.5 ounces or less shall be excluded when calculating both the juvenile delinquency and prior adult criminal record components of the sentencing guidelines offender score.
3. **Conduct a study to assess whether the offender score component of the sentencing guidelines may be amended to reduce previously existing racial and ethnic differences.** This report identified that Black sentenced individuals have more extensive prior criminal histories in comparison to White sentenced individuals. The MSCCSP should consider conducting a detailed analysis regarding the quantity and types of offenses that make up an individual's prior criminal record and assess differences by race to determine whether steps may be considered to reduce the impact of differential exposure to the criminal justice system. For example, the MSCCSP may consider whether the prior adult criminal record matrix should place less emphasis on low-level misdemeanors (e.g., category VII offenses), exclude specific low-level offenses (e.g., those with no incarceration penalty or those with statutory maximum penalties of 90 days or less), and/or exclude prior convictions after a certain period of crime-free time. Further, the MSCCSP should consider assessing whether the 10-year period required to apply the prior adult criminal record decay factor should be reduced.



4. **Review the feasibility, advantages, and disadvantages of amending the Maryland Automated Guidelines System (MAGS) to add a tool to assist with the calculation of the adult prior criminal record.** A prior adult criminal record tool would help automate the process of calculating the prior record component of the sentencing guidelines. An automated calculation tool would enable the MSCCSP to directly collect data about the specific convictions that are included in the prior adult criminal record. Direct access to the criminal history data would allow the MSCCSP to assess prior criminal convictions and analyze their impact on the sentencing guidelines more easily and accurately. Additionally, the automated tool may help assist practitioners more easily score the adult prior criminal record, which can be a complicated process when an individual's record involves multiple prior adjudications.
5. **Examine whether disparities exist in the utilization of corrections options and other alternatives to incarceration.** Prior research examining Pennsylvania sentences notes that minority individuals have lower odds of receiving an alternative to incarceration (Johnson and Dipietro, 2012) and are less likely to receive non-custodial sanctions (Painter-Davis and Ulmer, 2020). The MSCCSP should examine the utilization of corrections options and alternatives to incarceration to assess potential disparities by race and ethnicity. The results of the analysis could be used to inform a potential recommendation for action by the MSCCSP to educate the Judiciary and prosecutors regarding any observed differences in use of alternatives to incarceration and to illustrate that decisions regarding use of alternatives to incarceration may be a potential point of disparate treatment within the criminal justice system.

Recommendations for Other State Agencies and Local Entities

There are a multitude of additional factors that may impact the observed differences in sentencing that are outside of the scope of the MSCCSP and/or beyond its resources. These differences could be the result of disparate practices, but this report cannot speak to that because of the limitations of the data. Additional research would be necessary to obtain and analyze data from a variety of outside sources to assess disparity. The Commission presents the following recommendations to offer guidance to other State agencies, State legislators, and any other decision-maker to help assess and address a few of the many factors that lead to differences in sentence outcomes for minority offenders.

1. **Fund a study to examine the impact of race at multiple points in the criminal justice system.** The State should consider funding a study such as the one conducted by the Criminal Justice Policy Program at the Harvard Law School (Bishop et al., 2020) to complete a comprehensive analysis regarding the impact of race at multiple points of the criminal justice system to understand potential sources of disparity more fully. Specifically, a study should be commissioned to collect data to address potential differences in arrest, pretrial detention, and prosecution charging decisions. Further, the current report focuses on descriptive differences and cannot fully account for all



relevant considerations at sentencing. Future research should consider a multivariate statistical analysis that simultaneously controls for the many relevant considerations.

2. **Complete a comprehensive analysis of the racial impact of mandatory minimum penalties.** This report highlights that one of the driving factors behind the sentencing differences between Black, Hispanic, and White individuals sentenced for felony firearms/weapons offenses is the discrepancy in convictions for offenses involving mandatory minimum penalties. Approximately 78.7% of felony firearms/weapons offense convictions among Black guidelines-eligible individuals and 62.5% among Hispanic guidelines-eligible individuals involved a mandatory minimum penalty, while only 39% of firearms convictions among White guidelines-eligible individuals involved a mandatory minimum penalty. A comprehensive statewide analysis should be completed to study mandatory minimum sentences and should include an assessment of how the threat of mandatory minimum penalties impacts subsequent pleas. Since the court has no discretion when it comes to sentencing convicted offenses that carry mandatory minimums, particular attention should be paid to decision points earlier in the process, including charging decisions and plea negotiations.
3. **Complete an analysis of the utilization of pre-sentence detention and assess how pre-sentence detention varies by race.** The sentencing guidelines data indicate that Black and Hispanic sentenced individuals are more likely to be detained pre-sentence. The observed racial differences in the percentage of sentenced individuals who are incarcerated and the length of sentence are reduced when the analysis is limited to individual who are incarcerated post-sentence. This indicates that at least for those sentenced under the sentencing guidelines, racial differences are more significant in the decision made prior to sentencing with respect to pre-sentence detention. The State should complete an analysis to examine the impact of race on pre-sentence detention for all individuals sentenced statewide.
4. **Further explore whether there are unique factors influencing sentencing decisions for Hispanic individuals.** The sentencing guidelines data indicate that Hispanic individuals are more likely than other individuals to have no prior criminal record but to be sentenced for relatively serious offenses, particularly crimes of violence. It is possible that judges are giving longer sentences for some Hispanic individuals to account for the severity of their instant offense relative to the individual's prior criminal record. Further research is also necessary to assess whether immigration status has any impact on the measurement of prior criminal record history and/or the sentencing decision. Finally, given the reported concerns with accurately identifying the Hispanic population in the sentencing guidelines data, future research should assess whether alternative methods can be used to improve the measurement of the sentenced individual's ethnicity.
5. **Develop a unified resource for the Judiciary and other justice partners to help identify appropriate alternatives to incarceration.** In its 2018 [study](#) on alternatives to incarceration, the MSCCSP identified a robust array of programs throughout the State



that offered alternatives to incarceration (Maryland State Commission on Criminal Sentencing Policy, 2018). The study found that there are jurisdictional differences regarding available resources and programming, potentially causing regional and therefore racial disparity. In some jurisdictions, justice partners were unaware of useful programs that were available. There is a need for judges, attorneys, and justice agencies to have a unified database or web-based resource which can be used to identify appropriate correctional alternatives and treatment programs.



REFERENCES

American Civil Liberties Union. (2020). *A Tale of Two Counties: Racially Targeted Arrests in the Era of Marijuana Reform*, ACLU Research Report. <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>.

Bishop, E., Hopkins, B., Obiofuma, C., and Owusu, F. (2020). *Racial Disparities in the Massachusetts Criminal System. Report by The Criminal Justice Policy Program*, Harvard Law School. <https://hls.harvard.edu/wp-content/uploads/2022/08/Massachusetts-Racial-Disparity-Report-FINAL.pdf>.

Carson, E. A. (2021). *Prisoners in 2020*. Bureau of Justice Statistics.

Donnelly, E.A and MacDonald, J.M. (2018). *The Downstream Effects of Bail and Pretrial Detention on Racial Disparities in Incarceration*, Journal of Criminal Law and Criminology 108.4 775-814.

Johnson, B.D. and Dipietro, S. (2012). *The Power of Diversion: Intermediate Sanctions and Sentencing Disparity under Presumptive Guidelines*. Criminology 50.3: 811-850.

Johnson, B.D., Hernandez, R., Rackstraw, E., and Houlihan, S. (2022). *Final Report on Racial Justice in Prosecution in Baltimore*. University of Maryland & Baltimore State's Attorneys' Office. https://content.govdelivery.com/attachments/MDBALTIMORESAP/2022/03/16/file_attachments/2104881/FINAL_REPORT_ON_RACIAL_DISPARITY_FEB_2022.pdf.

Maryland State Commission on Criminal Sentencing Policy. (2018). *Study on Alternatives to Incarceration*. https://msccsp.org/Files/Reports/Alternatives_to_incarceration_Jan2018.pdf.

National Academies of Sciences, Engineering, and Medicine. (2022). *Reducing Racial Inequality in Crime and Justice: Science, Practice, and Policy*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/26705>.

Nellis, A. (2021). *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, The Sentencing Project.

Painter-Davis, N. and Ulmer, J. (2020). *Discretion and Disparity under Sentencing Guidelines Revisited: The Interrelationship between Structured Sentencing Alternatives and Guideline Decision-Making*, Journal of Research in Crime & Delinquency 57.3: 263-293.

Sabol, W.J. and Johnson, T. (2022). *Justice System Disparities: Black-White National Imprisonment Trends, 2020-2022*. Washington, D.C.: Council on Criminal Justice.



Santos, M.R., Glazener, E., Smith, J., Bhati, A., and Lynch, J. (2018). *An Analysis of the Scoring of Juvenile Delinquency History Under the Maryland Sentencing Guidelines: A Report to the Maryland State Commission on Criminal Sentencing Policy.*

https://msccsp.org/Files/Reports/MDAC_Juvenile_Score_Report_Jan2018.pdf.

USAFacts. (2022, July). *Our Changing Population: Maryland.*

<https://usafacts.org/data/topics/people-society/population-and-demographics/our-changing-population/state/maryland/?endDate=2021-01-01&startDate=2010-01-01>.

U.S. Census Bureau. (2020). *Race and Ethnicity Prevalence by State, 2020.*

<https://www.census.gov/library/stories/state-by-state/maryland-population-change-between-census-decade.html>.



APPENDICES



APPENDIX A: MARYLAND SENTENCING GUIDELINES WORKSHEET (VERSION MAGS 11.0)

MARYLAND SENTENCING GUIDELINES WORKSHEET				OFFENDER NAME - Last, First, Middle		SID #	SEX M ___ F ___	BIRTHDATE 	JURISDICTION
PSI	DATE OF OFFENSE	DATE OF SENTENCING	DISPOSITION TYPE	MODIFICATION TO COV SENTENCES (if applicable)					
YES ___ NO ___ AT THIS SENTENCING NUMBER OF: CONVICTION OFFENSES: CRIMINAL EVENT # _____ OF _____ WORKSHEET # _____			MSCCSP binding plea agreement ___ Other plea agreement ___ Plea, no agreement ___ Court trial ___ Jury trial ___	Per MD Rule 3-345 ___ HG, § 8-507 Order ___ Three-Judge Panel Review ___	REPRESENTATION Private ___ Public defender ___ Court appointed ___ Self ___	ETHNICITY Hispanic/Latino origin ___ Yes ___ No ___ Unknown ___ Victim Court Costs Imposed ___ Yes ___ No ___	RACE (Select all that apply) American Indian ___ or Alaska Native ___ Black or African American ___ White ___ Other ___ Unknown ___		
CONVICTED OFFENSE TITLE					MD CODE, ART. & SECTION	STAT. MAX	MIN TERM	CASE #	
1st Convicted Offense									
2nd Convicted Offense									
3rd 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 Program (Drug Court, Home Detention, Etc.)		
1st Off 2nd Off 3rd Off A. Seriousness Category 1 = 1 = V - VII 3 = 3 = IV 5 = 5 = III 8 = 8 = II 10 = 10 = I B. Victim Injury 1st Off 2nd Off 3rd Off 0 = 0 = No injury 1 = 1 = Injury, non-permanent 2 = 2 = Permanent injury or death C. Weapon Presence 1st Off 2nd Off 3rd Off 0 = 0 = No weapon 1 = 1 = Weapon other than firearm 2 = 2 = Firearm or explosive D. Special Victim Vulnerability 1st Off 2nd Off 3rd Off 0 = 0 = No 1 = 1 = Yes					A. Relationship to CJS When Instant Offense Occurred 0 = None or pending cases 1 = Court or other criminal justice supervision B. Juvenile Delinquency 0 = 23 years or older or 0 findings of a delinquent act w/in 5 years of the date of the most recent offense 1 = Under 23 years and: 1 or 2 findings of a delinquent act w/in 5 years of the date of the most recent instant offense 2 = Under 23 years and: 3 or more findings of a delinquent act w/in 5 years of the date of the most recent instant offense C. Prior Adult Criminal Record 0 = None 1 = Minor 3 = Moderate 5 = Major D. Prior Adult Parole/Prob Violation 0 = No 1 = Yes	1st Con. Off. TO 2nd Con. Off. TO 3rd Con. Off. TO	For theft, fraud, and related crimes, please indicate: <input type="checkbox"/> Economic Loss \$ <input type="checkbox"/> Unknown Amount Subsequent Offender Proven ___ Yes ___ No Restitution Proven ___ Yes ___ No For theft, fraud, and related crimes, please indicate: <input type="checkbox"/> Economic Loss \$ <input type="checkbox"/> Unknown Amount Subsequent Offender Proven ___ Yes ___ No Restitution Proven ___ Yes ___ No For theft, fraud, and related crimes, please indicate: <input type="checkbox"/> Economic Loss \$ <input type="checkbox"/> Unknown Amount Subsequent Offender Proven ___ Yes ___ No Restitution Proven ___ Yes ___ No Additional Sentence Information Probation <input type="checkbox"/> Community Service <input type="checkbox"/> Fine \$ Was the offender sentenced to a Corrections Option under Commission criteria? If yes, select all that apply: <input type="checkbox"/> Drug court <input type="checkbox"/> HG, § 8-507 order <input type="checkbox"/> Home detention <input type="checkbox"/> Suspended sentence per CN, § 5-601(e) <input type="checkbox"/> Inpatient substance abuse treatment <input type="checkbox"/> Work release <input type="checkbox"/> Inpatient mental health treatment <input type="checkbox"/> Weekend (or other discontinuous) incarceration Other (explain): _____ Other problem solving court (explain): _____ Was the offender sentenced to some other alternative to incarceration? ___ Yes ___ No If yes, select all that apply: <input type="checkbox"/> Outpatient substance abuse treatment <input type="checkbox"/> Outpatient mental health treatment <input type="checkbox"/> Other (explain): _____		
REASONS FOR GUIDELINES DEPARTURE					ADDITIONAL INFORMATION or Institutional/Parole Recommendation				
VICTIM INFORMATION Victim participation Yes ___ No ___ Victim notification form Yes ___ No ___ Victim notified plea Yes ___ No ___ Victim notified date Yes ___ No ___ Victim present Written V15 Yes ___ No ___ Oral V15 Yes ___ No ___ No contact requested Yes ___ No ___ No contact ordered Yes ___ No ___					DEPARTURE Code 9 or 18 (Please Explain): [] [] [] [] DEPARTURE Yes ___ No ___				
Overall Guidelines Range Multiple Counts Only					Additional Information or Institutional/Parole Recommendation Worksheet Completed By Title Sentencing Judge (Please Print)				
50% of Sentence Announced for COVs					Parole Notification ___ Yes ___ No Sentencing Judge's Signature				

Version: MAGS 11.0

Court clerks should attach completed copies to the commitment or probation order and also distribute copies to the following: sentencing judges, court file, prosecution, and defense



APPENDIX B: OFFENSES THAT CARRY MANDATORY MINIMUM SENTENCES

Felony Firearms/Weapons Offenses			
Offense	Statute	Statutory Maximum	Mandatory Minimum
Assault Weapons Use of assault weapon, rapid fire trigger activator, or magazine with a capacity of more than 10 rounds in the commission of a felony or crime of violence, 1st offense	CR, §4-306(b)(2)	20Y	5Y
Handguns—In General Handgun—unlawful wearing, carrying, etc., a loaded handgun, 2nd weapon offense	CR, §4-203(c)(3)(ii)2	10Y	1Y
Handguns—In General Handgun—unlawful wearing, carrying, etc., a loaded handgun, more than two prior weapon offenses	CR, §4-203(c)(4)(ii)2	10Y	3Y
Weapons Crimes, In General Possess, use, wear, carry, or transport a firearm in a drug offense, 1st offense	CR, §5-621(c)	20Y	5Y
Weapons Crimes, In General Possess, use, wear, carry, or transport a firearm in a drug offense, subsequent	CR, §5-621(c)	20Y	5Y
Weapons Crimes, In General Possess, use, wear, carry, or transport a firearm in a drug offense, 1st offense (if firearm is listed in CR, §4-301 or PS, §5-101, is a machine gun, or is equipped with a silencer)	CR, §5-621(d)	20Y	5Y
Weapons Crimes, In General Possess, use, wear, carry, or transport a firearm in a drug offense, subsequent (if firearm is listed in CR, §4-301 or PS, §5-101, is a machine gun, or is equipped with a silencer)	CR, §5-621(d)	20Y	5Y
Weapons Crimes, In General Possession of regulated firearm after having been convicted of a crime of violence or select drug crimes ³⁵	PS, §5-133(c)	15Y	5Y

³⁵ If, at the time of the offense, more than 5 years has elapsed since the person completed serving the sentence for the most recent conviction of a crime of violence or select drug crimes (including all imprisonment, mandatory supervision, probation, and parole), the imposition of the mandatory minimum sentence is within the discretion of the court.



Crimes of Violence ³⁶			
Offense	Statute	Statutory Maximum	Mandatory Minimum
Sexual Crimes Rape-1st degree, adult offender with victim under 13	CR, §3-303(c); CR, §3-303(d)(4) (penalty)	Life	25Y
Sexual Crimes Rape-2nd degree, adult offender with victim under 13	CR, §3-304(c)(2)	Life	15Y
Sexual Crimes Sex Offense-1st degree, adult offender with victim under 13 ³⁷	CR, §3-305(c); CR, §3-305(d)(4) (penalty) [repealed]	Life	25Y
Sexual Crimes Sex Offense-2nd degree, adult offender with victim under 13 ³⁶	CR, §3-306(c)(2) [repealed]	Life	15Y
Weapons Crimes, In General Unlawful use of firearm in commission of felony or crime of violence, 1st offense	CR, §4-204(c)(1)	20Y	5Y
Weapons Crimes, In General Unlawful use of firearm in commission of felony or crime of violence, subsequent	CR, §4-204(c)(2)	20Y	5Y
Felony Drug Offenses			
Offense	Statute	Statutory Maximum	Mandatory Minimum
CDS and Paraphernalia Manufacture, distribute, dispense, or possess certain Schedule I through V non-narcotics, large amounts as specified in CR, §5-612	CR, §5-612	5Y	5Y
CDS and Paraphernalia Manufacture, distribute, dispense, or possess certain Schedule I or II controlled dangerous substances, large amounts as specified in CR, §5-612	CR, §5-612	20Y	5Y
CDS and Paraphernalia Drug distribution—drug kingpin	CR, §5-613	40Y	20Y
CDS and Paraphernalia Manufacture, distribute, or dispense controlled dangerous substances near schools or on school vehicles, subsequent	CR, §5-627	40Y	5Y

³⁶ Per CR, § 14-101, there are mandatory minimum sentences that apply to certain subsequent crimes of violence. Individuals sentenced pursuant to this statute were not included in the mandatory minimum analyses in this report.

³⁷ *Sex offense, 1st degree*, and *Sex offense, 2nd degree*, were reclassified as *Rape, 1st degree*, and *Rape, 2nd degree*, respectively, effective October 1, 2017 (Chapters 161 and 162 of the 2017 Laws of Maryland). *Sex offense, 1st degree*, and *Sex Offense, 2nd degree*, may still appear in the sentencing guidelines data with a sentence date on or after October 1, 2017, if the offense was committed prior to October 1, 2017.