

# Maryland State Commission on Criminal Sentencing Policy



## Annual Report 2017

University of Maryland  
(301) 403-4165 | phone

4511 Knox Road, Suite 309  
(877) 825-1991 | toll free

College Park, MD 20742  
[www.msccsp.org](http://www.msccsp.org)



**COMMISSION MEMBERS**

***Members Appointed by the Governor***

Chair

**Honorable Glenn T. Harrell, Jr. (Ret.)**

Criminal Justice/Corrections Policy Expert

**Brian D. Johnson, Ph.D.**

State's Attorney

**Honorable Brian L. DeLeonardo**

Criminal Defense Attorney

**Richard A. Finci, Esquire**

Victims' Advocacy Group

**Honorable Laura L. Martin**

Law Enforcement

**Colonel William M. Pallozzi**

Local Detention Center

**LaMonte E. Cooke**

Public Representatives

**Barbara Dorsey Domer**

**William E. Koutroumpis** (July 2017 – Present)

**Paul F. Enzinna, Esquire** (2007 – June 2017)

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

Appellate Courts Representative

**Honorable James P. Salmon (Ret.)**

Vice Chair; Circuit Court

**Honorable Shannon E. Avery**

District Court

**Honorable Patrice E. Lewis**

***Members Appointed by the President of the Senate***

Senators

**Honorable Delores G. Kelley**

**Honorable Robert G. Cassilly**

***Members Appointed by the Speaker of the House***

Delegates

**Honorable Joseph F. Vallario, Jr.**

**Honorable Curtis S. Anderson**

***Ex-Officio Members***

Attorney General

**Honorable Brian E. Frosh**

**(Elizabeth Embry, Esquire, Attorney General's Representative)**

Public Defender

**Paul B. DeWolfe, Esquire**

**(William Davis, Esquire, Public Defender's Representative)**

Secretary of Department of Public Safety & Correctional Services

**Stephen T. Moyer**

**(Rachel Sessa, Secretary's Representative)**

Maryland State Commission on  
Criminal Sentencing Policy

2017 | Annual Report



**MSCCSP**  
University of Maryland  
4511 Knox Road, Suite 309, College Park, MD 20742  
[www.msccsp.org](http://www.msccsp.org)



**COMMISSION STAFF**

**Executive Director**

David A. Soulé, Ph.D.

**Research Director**

Stacy Skroban Najaka, Ph.D.

**Program Analyst**

Sarah Bowles

**Administrative/Training Coordinator**

Katharine Pembroke

**Policy Analyst**

Jennifer Lafferty

**INTERNS**

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

Shelby Pittman, University of Maryland

Shantel Frederick, University of Maryland

---

# MSCCSP

---



---

## Maryland State Commission on Criminal Sentencing Policy

---

### Chair

Hon. Glenn T. Harrell, Jr. (Ret.)

### Vice-Chair

Hon. Shannon E. Avery

### Commissioners

Del. Curtis S. Anderson

Sen. Robert G. Cassilly

LaMonte E. Cooke

Hon. Brian L. DeLeonardo

Paul B. DeWolfe, Esq.

Barbara Dorsey Domer

Richard A. Finci, Esq.

Hon. Brian E. Frosh

Brian D. Johnson, Ph.D.

Sen. Delores G. Kelley

William E. Koutroumpis

Hon. Patrice E. Lewis

Hon. Laura L. Martin

Sec. Stephen T. Moyer

Col. William M. Palozzi

Hon. James P. Salmon (Ret.)

Del. Joseph F. Vallario, Jr.

### Executive Director

David A. Soulé, Ph.D.

January 31, 2018

To: The Honorable Lawrence J. Hogan, Jr., Governor  
The Honorable Boyd K. Rutherford, Lt. Governor  
The Honorable Mary Ellen Barbera, Chief Judge of Maryland  
The Honorable Brian E. Frosh, Attorney General of Maryland  
The Honorable Members of the General Assembly of Maryland

Pursuant to Criminal Procedure Article, § 6-209, Annotated Code of Maryland, the Maryland State Commission on Criminal Sentencing Policy (the MSCCSP or Commission) is required annually to review sentencing policy and practice and report upon the work of the Commission. In compliance with this statutory mandate, we submit respectfully for your review the 2017 Annual Report of the MSCCSP.

This report details the 2017 activities of the MSCCSP, highlighted by the study (and clarification) of the juvenile delinquency component of the prior record score, continued deployment of the Maryland Automated Guidelines System (MAGS), and completion of a study on alternatives to incarceration as mandated by the Justice Reinvestment Act. Additionally, the report summarizes circuit court sentencing practices and trends in Maryland for fiscal year 2017, while providing a comprehensive examination of judicial compliance with the State's voluntary sentencing guidelines, describing information provided on the State's sentencing guidelines worksheets, and finally offering a description of planned activities for 2018. We hope that this report and the other resources provided by the MSCCSP help inform and promote fair, proportional, and non-disparate sentencing practices throughout Maryland. In accordance with § 2-1246 of the State Government Article, Annotated Code of Maryland, we have submitted five printed copies of the MSCCSP 2017 Annual Report to the Library of the Department of Legislative Services. This report is accessible for viewing and downloading on the Commission's website at: <http://www.msccsp.org/Reports/>.

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

Sincerely,

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

## TABLE OF CONTENTS

<b>Executive Summary .....</b>	<b>iii</b>
<b>The Maryland State Commission on Criminal Sentencing Policy .....</b>	<b>1</b>
Guidelines Background.....	1
MSCCSP Background .....	4
MSCCSP Structure.....	5
<b>MSCCSP Activities in 2017 .....</b>	<b>8</b>
Review of New and Amended Offenses Passed During the 2017 Legislative Session.....	8
Miscellaneous Modifications to the Guidelines Offense Table in 2017 .....	9
Adoption of Revised Seriousness Categories Related to Amended Offenses Pursuant to the Justice Reinvestment Act.....	12
Revised Language in the Maryland Sentencing Guidelines Manual (MSGM) Regarding Judicial Responsibilities in Reviewing Guidelines Worksheets .....	22
Adoption of New Policy for Posting Testimony from the Public Comments Hearing ...	22
Study on Alternatives to Incarceration.....	24
Juvenile Delinquency Score Project.....	28
Maryland Automated Guidelines System (MAGS).....	31
Training and Education.....	36
Information, Data Requests, and Outreach.....	38
Data Collection, Oversight, and Verification.....	39
Public Comments Hearing .....	40
<b>Sentences Reported in FY 2017 .....</b>	<b>41</b>
Sentencing Guidelines Worksheets Received.....	41
Guidelines Case Characteristics .....	44
<b>Judicial Compliance with Maryland’s Voluntary Sentencing Guidelines .....</b>	<b>54</b>
Judicial Compliance Rates Overall .....	54
Judicial Compliance Rates by Circuit.....	56
Judicial Compliance Rates by Crime Category .....	58
Judicial Compliance Rates by Type of Disposition .....	59
Judicial Compliance Rates by Crime Category and Disposition .....	60
Departure Reasons.....	61

---

## TABLE OF CONTENTS (CONTINUED)

<b>Additional Information Collected</b> .....	64
Report on Adjustments from Reconsidered Sentences Involving Crimes of Violence.....	64
Economic Loss in Title 7 and Title 8 Crimes .....	65
Victim Information .....	66
<b>MSCCSP Planned Activities for 2018</b> .....	69
<b>Appendices</b> .....	70
Appendix A: Sentencing Guidelines Matrices.....	71
Appendix B: Maryland Sentencing Guidelines Worksheet.....	74
Appendix C: Sentencing Guidelines Compliance and Average Sentence by Offense Type, Fiscal Year 2017 .....	75
Appendix D: Description of Types of Disposition.....	76
Appendix E: Common Departure Reasons Listed on the Sentencing Guidelines Departure Reference Card .....	77

## EXECUTIVE SUMMARY

The Judiciary introduced the concept of judicial sentencing guidelines in Maryland in the late 1970s. The Court of Appeals formed a committee in May 1978 to review recent developments in sentencing in the United States, study the major proposals for reform (e.g., determinate sentencing, mandatory sentencing, sentencing guidelines, sentencing councils), and consider sentencing practices in Maryland. The sentencing guidelines were developed based on extensive collection and analysis of data on past sentencing practices in Maryland, and their design accounts for both offender and offense characteristics in determining the appropriate sentence range. Beginning in June 1981, four jurisdictions representing a diverse mix of areas piloted the sentencing guidelines. At the conclusion of the test period in May 1982, the Judicial Conference decided to continue using sentencing guidelines in the pilot jurisdictions for an additional year, given the initial success of the guidelines. After two years of experience with sentencing guidelines in Maryland on a test basis, in 1983 the Judicial Conference voted favorably on (and the Maryland General Assembly approved) the guidelines, adopting them formally statewide.

The voluntary sentencing guidelines cover most circuit court cases and provide recommended sentence ranges for three broad categories of offenses: person, drug, and property. The guidelines recommend whether to incarcerate an offender and if so, provide a recommended sentence length range, based largely on the available data for how Maryland circuit court judges have sentenced similar convictions. The sentencing guidelines are advisory and judges may, at their discretion, impose a sentence outside the guidelines. Judges are, however, asked to document the reason or reasons for sentencing outside of the guidelines if they do so.

The Maryland General Assembly created the Maryland State Commission on Criminal Sentencing Policy (MSCCSP or Commission) in 1999 to oversee sentencing policy and to monitor the State's voluntary sentencing guidelines. The General Assembly established six goals to guide the Commission's work: (1) sentencing should be fair and proportional and sentencing policies should reduce unwarranted disparity, (2) sentencing policies should help citizens understand how long a criminal will be confined, (3) the preservation of meaningful judicial discretion, (4) sentencing guidelines should be voluntary, (5) the prioritization of prison usage for violent and career criminals, and (6) the imposition of the most appropriate criminal penalties. The Commission consists of 19 members, including members of the Judiciary,

criminal justice practitioners, members of the Senate of Maryland and the House of Delegates, and representatives of the public.

The primary responsibilities of the MSCCSP include: collection and automation of the sentencing guidelines worksheets, maintaining the sentencing guidelines database, and conducting training and orientation for criminal justice personnel. In addition, the Commission monitors judicial compliance with the guidelines and may adopt changes to the guidelines consistent with the sentencing practices of Maryland circuit court judges.

In 2017, the MSCCSP reviewed new and amended criminal laws from the 2017 Legislative Session, reviewed and classified previously unclassified offenses, made miscellaneous modifications to the Guidelines Offense Table to provide greater clarity to practitioners, adopted seriousness categories for new and amended offenses pursuant to the Justice Reinvestment Act (JRA), expanded the definition of corrections options to include specified sentences with required substance abuse treatment as guidelines-compliant, revised language contained in the Maryland Sentencing Guidelines Manual (MSGM) regarding the judge's responsibility to review guidelines worksheets, adopted a new policy pertaining to the publication of testimony from the annual Public Comments Hearing, completed the Study on Alternatives to Incarceration, and adopted changes to the juvenile delinquency scoring component of the Maryland sentencing guidelines' offender score. The MSCCSP also provided training and education to promote the consistent application of the sentencing guidelines, provided data and sentencing-related information to state agencies and other interested parties, and completed data verification and data entry reviews to improve the accuracy of the sentencing guidelines data. Additionally, the MSCCSP completed several key tasks towards the continued deployment of the Maryland Automated Guidelines System (MAGS). Finally, the MSCCSP held its annual Public Comments Hearing in December to provide a forum for the public to provide testimony and feedback on sentencing-related issues.

In fiscal year 2017, the MSCCSP received guidelines worksheets for 10,119 sentencing events in the State's circuit courts. A worksheet was submitted for 89% of guidelines-eligible cases. Worksheets for 5,044 of the 10,119 sentencing events were submitted electronically using MAGS in Allegany, Baltimore, Calvert, Cecil, Charles, Frederick, Garrett, Harford, Montgomery, Prince George's, St. Mary's, and Washington Counties. The vast majority of cases were resolved by either an ABA plea agreement (45.3%) or a non-ABA plea agreement (34.4%). Slightly more than three-quarters of guidelines cases were sentenced to incarceration, and the median sentence length among those incarcerated (excluding suspended time) was 1.3 years.

The overall guidelines compliance rate in fiscal year 2017 was 81%, which exceeded the Commission's goal of 65% compliance. When departures occurred, they were more often below the guidelines than above. All eight trial court judicial circuits met the benchmark rate of 65% compliance. Departures were least likely for person offenses, followed closely by drug offenses and property offenses. A comparison of judicial compliance rates by type of disposition (plea agreement, plea with no agreement, bench trial, and jury trial) showed that compliance was most likely in cases adjudicated by a plea agreement. In contrast, compliance was least likely in cases adjudicated by a plea with no agreement. When considering compliance rates by both crime category and disposition, the highest compliance rate was observed for person offenses adjudicated by a plea agreement. Property offenses resolved by a bench trial had the lowest compliance rate, and the majority of departures in this category were below the guidelines.

Efforts to facilitate the reporting of reasons for departing from the guidelines have helped to address the underreporting of departure reasons. When reported, the most commonly cited reason for departures below the guidelines was that the parties reached a plea agreement that called for a reduced sentence. In comparison, the most commonly cited reason for departures above the guidelines was the State's Attorney or Division of Parole and Probation's recommendation.

The MSCCSP has several important activities planned for 2018. In addition to performing routine activities, such as collecting sentencing guidelines worksheets, maintaining the sentencing guidelines database, monitoring judicial compliance with the guidelines, and providing sentencing guidelines education and training, the MSCCSP will review all criminal offenses and changes in the criminal laws passed by the General Assembly during the 2018 Legislative Session and adopt seriousness categories for new and revised offenses as needed. Additionally, the MSCCSP will implement the approved changes to the juvenile delinquency scoring component of the offender score. The MSCCSP will move forward with the execution of recommended actions one through four from the MSCCSP's January 2018 JRA-mandated study on alternatives to incarceration, while also continuing to collaborate with criminal justice partners to collect data for the Justice Reinvestment Oversight Board to assess the impact of the JRA. Furthermore, the MSCCSP will continue a gradual statewide roll-out of MAGS, working with individual jurisdictions to establish secure login procedures for access to MAGS while also providing orientation and training on the use of the application. Finally, the MSCCSP will coordinate with the Administrative Office of the Courts (AOC) to continue planning for interoperability with the Judiciary's new case management system, Maryland Electronic Courts (MDEC). The activities described above are just a few of the many tasks that will be completed

by the MSCCSP in 2018 to support the consistent, fair, and proportional application of sentencing practice in Maryland.

# THE MARYLAND STATE COMMISSION ON CRIMINAL SENTENCING POLICY

## Guidelines Background

---

### History of the Maryland Sentencing Guidelines

The Judiciary introduced the concept of judicial sentencing guidelines in Maryland in the late 1970s in response to a growing concern regarding unwarranted sentencing disparity and a general interest in sentencing by the public, legislators, and other elected officials. The Court of Appeals formed the Judicial Committee on Sentencing in May 1978 to review recent developments in sentencing in the United States, study the major proposals for reform (e.g., determinate sentencing, mandatory sentencing, sentencing guidelines, sentencing councils), and consider sentencing practices in Maryland. In its report to the Maryland Judicial Conference, the Committee on Sentencing recommended a system of voluntary, descriptive sentencing guidelines for use in circuit courts only, which the Judicial Conference unanimously approved in April 1979. Later that year Maryland received a grant from the National Institute of Justice to participate in a multijurisdictional field test of sentencing guidelines. Under the grant, a system of sentencing guidelines for Maryland's circuit courts developed, along with an Advisory Board to oversee the guidelines. The sentencing guidelines were developed based on extensive collection and analysis of data on past sentencing practices in Maryland, as well analyses of surveys sent to a sample of judges asking them to report on factors considered at sentencing in a series of hypothetical scenarios. The sentencing guidelines development process resulted in a design that accounts for both offender and offense characteristics in determining the appropriate sentence range. Beginning in June 1981, four jurisdictions representing a diverse mix of areas piloted the sentencing guidelines. At the conclusion of the test period in May 1982, the Judicial Conference decided to continue using sentencing guidelines in the pilot jurisdictions for an additional year, given the initial success of the guidelines. After two years of experience with sentencing guidelines in Maryland on a test basis, in 1983 the Judicial Conference voted favorably on (and the Maryland General Assembly approved) the guidelines, adopting them formally statewide.

Since that time, the sentencing guidelines have been subject to several important reviews. The first major review of the guidelines took place in 1984 resulting in revisions to both the sentencing guidelines worksheet and the sentencing guidelines manual. In 1987, the Advisory Board conducted a comprehensive review of the guidelines informed by over three years of sentencing data collected from the time of guidelines implementation. In addition to changing

the sentencing guidelines matrices and the type of information collected on the sentencing guidelines worksheet, this revision added arson of a dwelling, escape, and perjury to the guidelines, and provided that an offender's prior record remains the same across all convicted offenses in multiple event cases. Subsequently, from 1991 through 1994, the Advisory Board conducted a three-year review of the sentencing practices of circuit court judges. This review established the 65% guidelines compliance standard relied upon today by the Maryland State Commission on Criminal Sentencing Policy (MSCCSP or Commission) when considering potential modifications to the guidelines.<sup>1</sup> Most recently, the Commission approved revisions to rows V and IV of the sentencing matrix for drug offenses, effective July 1, 2016. In addition to these notable revisions, there have been many other changes throughout the history of the guidelines, as it has always been the intention that the guidelines remain an accurate reflection of current sentencing practices in Maryland.

### **The Present Sentencing Guidelines**

Pursuant to Criminal Procedure Article (CP), § 6-216, Annotated Code of Maryland, the circuit courts shall consider the sentencing guidelines in deciding the proper sentence. The voluntary sentencing guidelines apply generally to cases prosecuted in Maryland circuit courts, with a few key exceptions. Because the guidelines were designed to apply to incarcerable offenses for which the circuit court has original jurisdiction, the following categories of circuit court cases are excluded from the guidelines: prayers for jury trials from the District Court in which a pre-sentence investigation (PSI) was not ordered, criminal appeals from the District Court in which a PSI was not ordered, crimes that carry no possible penalty of incarceration, criminal nonsupport and criminal contempt cases, sentencing hearings in response to a violation of probation, violations of public local laws and municipal ordinances, and cases in which the offender was found not criminally responsible (NCR). Because they generally involve more serious and/or incarcerable offenses, prayers for jury trials and criminal appeals from the District Court in which a PSI is ordered are defined as guidelines-eligible cases. Reconsiderations of sentencing for convictions of crimes of violence and three-judge panel reviews are also defined as guidelines-eligible cases if there is an adjustment made to the defendant's active sentence. Table 1 provides a complete description of guidelines-eligible and ineligible cases.

---

<sup>1</sup> In 1991, the Sentencing Guidelines Revision Committee of the Advisory Board established an expectation that two-thirds of sentences would fall within the recommended sentencing range and when sentencing practice resulted in departures from the recommended range in more than one-third of the cases, the guidelines would be revised. Based on this previously adopted policy, the Commission adopted the goal of 65% as the benchmark standard for sentencing guidelines compliance.

**Table 1. Guidelines-Eligible and Ineligible Cases**

<b>For Cases Originating in Circuit Court</b>	
<b>Guidelines-Eligible</b>	<b>Guidelines-Ineligible</b>
Offenses originally prosecuted in Circuit Court	Violations of public local laws and municipal ordinances
	Offenses that carry no possible penalty of incarceration
	Criminal nonsupport and criminal contempt
All pleas, including American Bar Association (ABA) pleas, nonbinding pleas, and pleas of <i>nolo contendere</i> (no contest) by the offender	Cases in which the offender was found not criminally responsible (NCR)
Sentences to probation before judgment (PBJ)	Sentencing hearings in response to a violation of probation
Initial sentences with a condition of drug court or an inpatient commitment under Health-General Article, Title 8, Subtitle 5, Annotated Code of Maryland	Reconsiderations for offenses other than a crime of violence
Reconsiderations for a crime of violence (as defined in Criminal Law Article, § 14-101, Annotated Code of Maryland) if there is an adjustment to the active sentence	Reconsiderations for a crime of violence if there is <u>NOT</u> an adjustment to the active sentence
Three-judge panel reviews if there is an adjustment to the active sentence	Three-judge panel reviews if there is <u>NOT</u> an adjustment to the active sentence
<b>For Cases Originating in District Court</b>	
<b>Guidelines-Eligible</b>	<b>Guidelines-Ineligible</b>
Prayers for a jury trial if a pre-sentence investigation (PSI) is ordered	Prayers for a jury trial if a PSI is <u>NOT</u> ordered
Appeals from District Court if a PSI is ordered	Appeals from District Court if a PSI is <u>NOT</u> ordered

The sentencing guidelines cover three broad categories of offenses: person, drug, and property. The guidelines recommend whether to incarcerate an offender and if so, provide a recommended sentence length range, based largely on the available data for how Maryland circuit court judges have sentenced similar convictions. For each offense category, a separate matrix contains cells with recommended sentence ranges. Appendix A includes a copy of the three sentencing matrices. The grid cell at the intersection of an individual's offender score and offense seriousness category (for drug and property offenses) or offense score (for person offenses) determines the sentence recommendation. The offense seriousness category is an offense ranking ranging from I to VII, where I designates the most serious criminal offenses and VII designates the least serious criminal offenses. For person offenses, the seriousness category, the physical or psychological injury to the victim, the presence of a weapon, and any special vulnerability of the victim (such as being under 11 years old, 65 years or older, or physically or cognitively impaired) together determine the offense score. The offender score is a measure of the individual's criminal history, determined by whether or not the offender was in

the criminal justice system at the time the offense was committed (i.e., on parole, probation, or temporary release from incarceration, such as work release), has a juvenile record or prior criminal record as an adult, and has any prior adult parole or probation violations.

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

---

## **MSCCSP Background**

---

The Maryland General Assembly created the MSCCSP in May 1999, after a study commission (the Maryland Commission on Criminal Sentencing Policy) recommended creating a permanent commission in its final report to the General Assembly. The MSCCSP assumed the functions of the Sentencing Guidelines Advisory Board of the Judicial Conference, initially established in 1979 to develop and implement Maryland's sentencing guidelines. The General Assembly created the MSCCSP to oversee sentencing policy and to maintain and monitor the State's voluntary sentencing guidelines. CP, § 6-202 sets out six goals for the MSCCSP, stating "[t]he General Assembly intends that:

- (1) sentencing should be fair and proportional and that sentencing policies should reduce unwarranted disparity, including any racial disparity, in sentences for criminals who have committed similar crimes and have similar criminal histories;
- (2) sentencing policies should help citizens to understand how long a criminal will be confined;
- (3) sentencing policies should preserve meaningful judicial discretion and sufficient flexibility to allow individualized sentences;
- (4) sentencing guidelines be voluntary;
- (5) the priority for the capacity and use of correctional facilities should be the confinement of violent and career criminals;
- (6) sentencing judges in the State should be able to impose the most appropriate criminal penalties, including corrections options programs for appropriate criminals."

The General Assembly designed and authorized the MSCCSP with the purpose of fulfilling the above legislative intentions. The General Assembly authorized the MSCCSP to "adopt existing sentencing guidelines for sentencing within the limits established by law which shall be considered by the sentencing court in determining the appropriate sentence for defendants who

plead guilty or nolo contendere to, or who were found guilty of crimes in a circuit court” (1999 Md. Laws, Chap. 648). The MSCCSP also has authority to “adopt guidelines to identify defendants who would be appropriate for participation in corrections options programs” (1999 Md. Laws, Chap. 648). The sentencing court is to consider these guidelines in selecting either the guidelines sentence for a defendant or sanctions under corrections options.

Pursuant to CP, § 6-210, the MSCCSP collects sentencing guidelines worksheets, monitors sentencing practice, and adopts changes to the sentencing guidelines matrices. The Maryland sentencing guidelines worksheet enables the MSCCSP to collect criminal sentencing data from State and local agencies involved in criminal sentencing to meet these requirements. Criminal justice practitioners complete worksheets for guidelines-eligible criminal cases prosecuted in circuit court to determine the recommended sentencing outcome and to record sentencing data. Appendix B provides a copy of the current Maryland sentencing guidelines worksheet. The courts are expected to review worksheets to confirm that the guidelines reflected on the worksheets were considered in the respective cases (COMAR 14.22.01.03F(4)). With the exception of worksheets completed via the Maryland Automated Guidelines System (MAGS), the court clerk mails a hard copy to the Commission’s office. The Commission staff is responsible for data entry of non-MAGS worksheets and monitoring all data collected within the sentencing guidelines worksheets. Data collected by the Commission permit analyses of sentencing trends with respect to compliance with the guidelines, particular offenses, specific types of offenders, and geographic variations. The MSCCSP uses the guidelines data to monitor circuit court sentencing practices and when necessary, to adopt changes to the guidelines consistent with legislative intent.

The Commission’s enabling legislation also authorizes the MSCCSP to conduct guidelines training and orientation for criminal justice system participants and other interested parties. Additionally, the MSCCSP administers the guidelines system in consultation with the General Assembly and provides fiscal and statistical information on proposed legislation concerning sentencing and correctional practice.

## **MSCCSP Structure**

---

The MSCCSP consists of 19 members, including members of the Judiciary, criminal justice practitioners, members of the Maryland Senate and House of Delegates, as well as public representatives.



Governor Lawrence J. Hogan, Jr. appointed, effective July 1, 2015, the Honorable Glenn T. Harrell, Jr., Judge, Court of Appeals, 4th Appellate Judicial Circuit, Prince George's County (retired), as the chair of the MSCCSP. Other Governor appointees include William E. Koutroumpis, a member of the public, and Barbara Dorsey Domer, Frederick County Circuit Court Administrator (retired), who serve as the two public representatives on the Commission; Colonel William M. Pallozzi, Secretary of State Police, who serves as the

representative from law enforcement; the Honorable Brian L. DeLeonardo, State's Attorney for Carroll County, who serves as the representative for the Maryland State's Attorneys' Association; LaMonte E. Cooke, Director of Correctional Services for Queen Anne's County, who serves as the local correctional facilities representative; Richard A. Finci, a criminal defense attorney, who serves as the representative for the Maryland Criminal Defense Attorneys' Association; the Honorable Laura L. Martin, State's Attorney for Calvert County, who serves as the victims' advocacy group representative; and Dr. Brian D. Johnson, Professor, University of Maryland Department of Criminology and Criminal Justice (CCJS), who serves as the criminal justice/corrections policy expert. Effective July 1, 2017, Mr. Koutroumpis replaced Paul F. Enzinna, a defense attorney and public representative on the Commission, who served as a member of the MSCCSP from 2007 through 2017. Governor Hogan reappointed Dr. Brian D. Johnson and the Honorable Laura L. Martin and Brian L. DeLeonardo to serve in their respective positions on the Commission in November 2017.

The Chief Judge of the Court of Appeals of Maryland is responsible for three appointments to the Commission. The judicial appointees are the Honorable James P. Salmon, Judge, Court of Special Appeals, 4th Appellate Judicial Circuit, Prince George's County (retired); the Honorable Patrice E. Lewis, Judge, District Court of Maryland, District 5, Prince George's County; and the Honorable Shannon E. Avery, Judge, Circuit Court for Baltimore City, 8th Judicial Circuit.

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

Finally, ex-officio members include the State's Attorney General, Brian E. Frosh; the State's Public Defender, Paul B. DeWolfe; and the Secretary of the Department of Public Safety and Correctional Services (DPSCS), Stephen T. Moyer.

Four of the Commissioners participate as members of the Sentencing Guidelines Subcommittee (Guidelines Subcommittee). The Honorable Shannon E. Avery chairs the Guidelines Subcommittee, and the other members include Richard A. Finci, Senator Delores G. Kelley, and the Honorable Laura L. Martin. Each year, the Guidelines Subcommittee reviews all new and revised offenses created by the General Assembly and provides recommendations to the full Commission for seriousness category classification. Additionally, the Guidelines Subcommittee reviews suggested revisions to the guidelines calculation process and reports to the overall Commission on guidelines compliance data.

The MSCCSP is a state agency within the Executive Branch of Maryland, with its office in College Park. In an effort to allow the Commission to benefit from the shared resources of the



University of Maryland, the Commission's staff office was established with guidance from the CCJS Department. The University of Maryland connection reinforces the independent status of the Commission

by ensuring non-partisan review and analyses of sentencing data. The MSCCSP and University of Maryland's relationship is mutually beneficial, as the MSCCSP relies on student interns for a substantial portion of its data entry requirements, while also receiving administrative and information technology support from the University. In return, the University benefits from opportunities for students to develop research and practical skills through internships at the MSCCSP.

## MSCCSP ACTIVITIES IN 2017

The MSCCSP held four meetings in 2017. The meetings occurred on May 9, July 11, September 19, and December 11. In addition, the Commission held its annual Public Comments Hearing on December 11. The minutes for all Commission meetings are available on the Commission's website ([www.msccsp.org](http://www.msccsp.org)).<sup>2</sup> The following discussion provides a review of the Commission's activities in 2017.

### Review of New and Amended Offenses Passed During the 2017 Legislative Session

The MSCCSP reviewed new criminal laws from the 2017 Legislative Session to identify new and amended offenses requiring the adoption or modification of seriousness categories. The MSCCSP determines new and revised seriousness categories by reviewing the seriousness categories for similar offenses (i.e., offenses with similar penalties, misdemeanor/felony classification, and crime type) previously classified by the Commission.

#### New Offenses Passed During the 2017 Legislative Session

The MSCCSP reviewed one new offense passed during the 2017 Legislative Session and voted for its respective seriousness category, shown in Table 2, at its July 11 meeting. After promulgating the proposed classification for this offense through the COMAR review process, the MSCCSP adopted this update effective December 1, 2017.

**Table 2. Guidelines Offense and Adopted Seriousness Category Related to New Offense, 2017 Legislative Session**

Legislation	Annotated Code of Maryland	Offense	Statutory Maximum	Adopted Seriousness Category
Chapter 569 SB 539	CR, § 5-608.1	<b>CDS and Paraphernalia</b> Knowingly violated CR, § 5-602 with a mixture of heroin and fentanyl or any analogue of fentanyl; or fentanyl or any analogue of fentanyl	10Y	III-C

<sup>2</sup> The minutes for the December 11 meeting will be available on the MSCCSP website after the Commission reviews and approves the minutes at its next meeting, scheduled for May 8, 2018.

### Amended Offenses Passed During the 2017 Legislative Session

The MSCCSP considered amended criminal laws from the 2017 Legislative Session and identified two offenses that required review due to increases in the statutory maximum penalties. Table 3 notes the two relevant amended offenses and the various revisions. The MSCCSP reviewed these offenses and voted for their seriousness categories, shown in Table 3, at its July 11 meeting. After promulgating these proposed offense table updates through the COMAR review process, the MSCCSP adopted these revisions effective December 1, 2017.

**Table 3. Guidelines Offenses and Adopted Seriousness Categories Related to Amended Offenses, 2017 Legislative Session**

Legislation	Annotated Code of Maryland	Offense	Prior Stat. Max. / Seriousness category	New Stat. Max. / Seriousness category
Chapters 167 & 168 SB 229/HB 635	CR, § 2-506(c)(1)	<b>Manslaughter and Related Crimes</b> Negligent homicide by motor vehicle or vessel while impaired by CDS, 1 <sup>st</sup> offense	3 years / VI	5 years / V
Chapters 167 & 168 SB 229/HB 635	CR, § 2-506(c)(2)	<b>Manslaughter and Related Crimes</b> Negligent homicide by motor vehicle or vessel while impaired by CDS, <b>subsequent</b>	5 years / V	10 years / IV

Finally, the MSCCSP revised the Guidelines Offense Table to reflect the recodification of the penalty portion of the Transportation Law Article (TR), pursuant to Senate Bill (SB) 165, 2017 Md. Laws, Chap. 55. Though SB165/Chapter 55 provided for no substantive changes to the penalties for motor vehicle offenses, nonsubstantive changes to the Guidelines Offense Table were nevertheless necessary to reflect the Article's recodification. After promulgating these proposed offense table updates through the COMAR review process, the MSCCSP adopted these revisions effective December 1, 2017.

### Miscellaneous Modifications to the Guidelines Offense Table in 2017

In its continued review of seriousness categories for all criminal offenses sentenced in the State's circuit courts, the MSCCSP identified one offense with a maximum incarceration penalty of one year or more not previously classified by the Commission and two offenses previously classified by the Commission that were amended prior to the current year's legislative session. These three offenses relate to the 2008 recodification of Article 83A to Economic Development Article (EC), §§ 10-439 and 10-440. The Commission reviewed the one previously unclassified

offense and two amended offenses listed in Table 4 and Table 5, respectively, during its December 11 meeting and voted for seriousness categories and offense type classifications consistent with those for similar offenses. After promulgating these proposed offense table updates through the COMAR review process, the MSCCSP expects to adopt these revisions effective July 1, 2018.

**Table 4. Adopted Seriousness Categories for Previously Unclassified Offenses**

Annotated Code of Maryland	Offense	Statutory Maximum	Offense Type	Adopted Seriousness category
EC, § 10-439	<b>Public Health and Safety, Crimes Against</b> Purchase, sell, transfer, or obtain any stem cell material donated in accordance with EC, § 10-438 for financial gain or advantage	3 years	Property	VI

**Table 5. Adopted Seriousness Categories for Previously Amended Offenses**

Legislation	Annotated Code of Maryland	Offense	Prior Stat. Max. / Seriousness category	New Stat. Max. / Seriousness category
Chapter 306 (2008) HB1050 (2008) <sup>3</sup>	EC, § 10-440	<b>Public Health and Safety, Crimes Against</b> Conducting or attempting to conduct human cloning, etc., first offense	3 years / VI	10 years / IV
Chapter 306 (2008) HB1050 (2008) <sup>3</sup>	EC, § 10-440	<b>Public Health and Safety, Crimes Against</b> Conducting or attempting to conduct human cloning, etc.	10 years / IV	10 years / IV

Finally, the MSCCSP revised the Guidelines Offense Table to clarify the classification of the distribution, possession with intent to distribute (PWID), and manufacture of methamphetamine (Criminal Law Article (CR), §§ 5-602 through 5-606) as seriousness category IV drug offenses. Based on questions from practitioners and a review of the MSCCSP's sentencing data, there was confusion as to whether the distribution, PWID, and manufacture of methamphetamine are penalized pursuant to CR, § 5-607, CR, § 5-608, or CR, § 5-609. CR, § 5-607 provides for a 5-

<sup>3</sup> This bill removed the distinction between first and subsequent offenses. Effective October 1, 2008, *Conducting or attempting to conduct human cloning, etc.*, both first and subsequent offenses, are subject to up to 10 years imprisonment. *Conducting or attempting to conduct human cloning, etc., first offense*, will be removed from the Guidelines Offense Table.

year statutory maximum for felony drug offenses involving all drugs not penalized pursuant to CR, § 5-608 or CR, § 5-609. Violations of CR, § 5-607 are classified as seriousness category IV drug offenses for the purposes of calculating the sentencing guidelines. CR, § 5-608 provides for a 20-year statutory maximum for felony drug offenses involving Schedule I or Schedule II narcotic drugs.<sup>4</sup> CR, § 5-609 provides for a 20-year statutory maximum for felony drug offenses involving select Schedule I and II hallucinogenic substances, including phencyclidine (PCP) and certain quantities of 3, 4–methylenedioxyamphetamine (MDMA). Violations of CR, § 5-608 and CR, § 5-609 are classified as seriousness category III-B drug offenses for the purposes of calculating the sentencing guidelines.

MSCCSP staff consulted with both the Office of the Attorney General and the District Court Commissioner’s Office regarding the appropriate penalties for the distribution, PWID, and manufacture of methamphetamine. Both agencies confirmed that, in accordance with CR, § 5-101, methamphetamine is classified as a non-narcotic drug and, as such, is penalized pursuant to CR, § 5-607 and subject to 5-year statutory maximum. Therefore, the distribution, PWID, and manufacture of methamphetamine are properly classified as seriousness category IV drug offenses for the purposes of calculating the sentencing guidelines.

To provide greater clarity to practitioners, at its July 11 meeting, the MSCCSP voted to revise the offense, *Unlawful distribution, manufacture, etc., Schedules I through V non-narcotics*, listed in the Guidelines Offense Table and shown in Table 6, to add methamphetamine as an example of a Schedule I through V non-narcotic drug. After promulgating this proposed offense table update through the COMAR review process, the MSCCSP adopted this revision effective December 1, 2017.

---

<sup>4</sup> Pursuant to the definition of narcotic drug outlined in CR, § 5-101.

**Table 6. Unlawful Distribution, Manufacture, Etc., Schedules I through V Non-Narcotics, as Displayed in the Guidelines Offense Table**

Annotated Code of Maryland	Offense	Statutory Maximum	Offense Type	Adopted Seriousness category
CR, § 5-607(a)	<p><b>CDS and Paraphernalia</b></p> <p>Unlawful distribution, manufacture, etc.; counterfeiting, etc.; manufacture, possession, etc., of certain equipment for illegal use; keeping common nuisance, Schedules I through V non-narcotics (e.g., amphetamines, methamphetamine, marijuana, synthetic marijuana, diazepam, MDMA under 750 grams, and Valium) and buprenorphine</p>	5 years	Drug	IV

### **Adoption of Revised Seriousness Categories Related to Amended Offenses Pursuant to the Justice Reinvestment Act**

During the 2016 Legislative Session, the Maryland Legislature passed the Justice Reinvestment Act (JRA; SB1005, 2016 Md. Laws, Chap. 515). The JRA effected widespread change across multiple areas within the criminal justice system, from pretrial detention through reentry and completion of supervision. Among other matters addressed, the JRA amended or repealed multiple statutory maximum and mandatory minimum penalties and promotes drug treatment rather than incarceration for many defendants. Many provisions of the JRA, including the penalty revisions, were not effective until October 1, 2017. Given the scope of the penalty revisions, the MSCCSP began review of the JRA penalty revisions in 2016. The Commission voted to adopt or amend the seriousness categories for the new and revised offenses, shown in Table 7, at its September 20, 2016, meeting. At its September 20, 2016, meeting, the Commission also voted to revise the definition of *corrections options* to align with the JRA's emphasis on substance abuse treatment for defendants convicted of drug possession. In accordance with CR, § 5-601(e), the MSCCSP voted to amend the *corrections options* definition to include specified sentences with required substance abuse treatment, therefore deeming the sentences guidelines compliant when certain conditions are met. Lastly, at its December 13, 2016, meeting, the Commission voted to instruct individuals completing the sentencing guidelines for drug and theft- and fraud-related offenses with decreased penalties pursuant to the JRA, committed prior to, but sentenced on or after, October 1, 2017, to complete the sentencing guidelines by selecting the revised offense and its corresponding seriousness category and applying its statutory maximum to cap the sentencing guidelines, when applicable. These instructions are consistent with Maryland and federal case law, which provide that a

defendant is subject to the statutory maximum in effect at the time of sentencing, unless pursuant to ex post facto laws, doing so would result in the defendant receiving a punishment harsher than that in effect at the time the offense was committed.<sup>5</sup>

The MSCCSP published its proposed revisions to the sentencing guidelines on its website after its September 20, 2016, meeting. After promulgating these proposed revisions through the COMAR review process, the MSCCSP adopted the revisions effective October 1, 2017, coinciding with the effective date of the JRA penalty revisions.

---

<sup>5</sup> See *Waker v. State of Maryland*, 431 Md. 1 (2011); and the ex post facto laws of both the United States Constitution and Article 17 of the Maryland Declaration of Rights.

**Table 7. Guidelines Offenses and Adopted Seriousness Categories Related to the Justice Reinvestment Act, Effective October 1, 2017<sup>6</sup>**

<b>Annotated Code of Maryland</b>	<b>Offense</b>	<b>Prior Stat. Max. / Seriousness Category</b>	<b>New Stat. Max. / Seriousness Category</b>
CR, § 5-601(c)(1)(i)	<b>CDS and Paraphernalia</b> Possession—non-marijuana, 1 <sup>st</sup> offense	4Y / V	1Y / VII
CR, § 5-601(c)(1)(ii)	<b>CDS and Paraphernalia</b> Possession—non-marijuana, 2 <sup>nd</sup> or 3 <sup>rd</sup> offense	4Y / V	18M / VII
CR, § 5-601(c)(1)(iii)	<b>CDS and Paraphernalia</b> Possession—non-marijuana, 4 <sup>th</sup> or subsequent offense	4Y / V	2Y / VII
CR, § 5-601(c)(2)(i)	<b>CDS and Paraphernalia</b> Possession—marijuana	1Y / VII	6M / VII
CR, § 5-608(a) CR, § 5-609(a)	<b>CDS and Paraphernalia</b> Unlawful distribution, manufacture, etc—narcotics and hallucinogenics (e.g., PCP, heroin, cocaine, LSD, oxycodone, and methadone)	20Y / IIIB	No change <sup>7</sup>
CR, § 5-608(b) CR, § 5-609(b)	<b>CDS and Paraphernalia</b> Unlawful distribution, manufacture, etc—narcotics and hallucinogenics, subsequent	20Y MM / IIIB	20Y / IIIB
CR, § 5-608(c) CR, § 5-609(c)	<b>CDS and Paraphernalia</b> Unlawful distribution, manufacture, etc—narcotics and hallucinogenics, subsequent	25Y MM / IIIB	25Y / IIIB
CR, § 5-608(d) CR, § 5-609(d)	<b>CDS and Paraphernalia</b> Unlawful distribution, manufacture, etc—narcotics and hallucinogenics, subsequent	40Y MM / IIIB	40Y / IIIB
CR, § 5-609(a)	<b>CDS and Paraphernalia</b> Unlawful distribution, manufacture, etc—MDMA/ecstasy 750 grams or more	20Y / IIIA	No change <sup>8</sup>

<sup>6</sup> Throughout this table, [brackets] indicate removed language, **bold, underlined** font is new language, Y = year, M = month, and MM = non-suspendable mandatory minimum.

<sup>7</sup> The JRA decreased the maximum fine for a violation of CR, § 5-608(a) and CR, § 5-609(a) from \$25,000 and \$20,000, respectively, to \$15,000. The JRA made no change to the maximum period of incarceration for CR, § 5-608(a) or CR, § 5-609(a). As such, the Commission voted to maintain the offense's existing seriousness category.

<sup>8</sup> The JRA decreased the maximum fine for a violation of CR, § 5-609(a) from \$20,000 to \$15,000. The JRA made no change to the maximum period of incarceration for CR, § 5-609(a). As such, the Commission voted to maintain the offense's existing seriousness category.

Annotated Code of Maryland	Offense	Prior Stat. Max. / Seriousness Category	New Stat. Max. / Seriousness Category
CR, § 5-609(b)	<b>CDS and Paraphernalia</b> Unlawful distribution, manufacture, etc— MDMA/ecstasy 750 grams or more, subsequent	20Y MM / IIIA	20Y / IIIA
CR, § 5-609(c)	<b>CDS and Paraphernalia</b> Unlawful distribution, manufacture, etc— MDMA/ecstasy 750 grams or more, subsequent	25Y MM / IIIA	25Y / IIIA
CR, § 5-609(d)	<b>CDS and Paraphernalia</b> Unlawful distribution, manufacture, etc— MDMA/ecstasy 750 grams or more, subsequent	40Y MM / IIIA	40Y / IIIA
CR, § 5-607(a) <sup>9</sup>	<b>CDS and Paraphernalia</b> Unlawful distribution, manufacture, etc— non-narcotics, subsequent	5Y/2Y MM / IV	5Y / IV
CR, § 5-612	<b>CDS and Paraphernalia</b> Manufacture, distribute, dispense, or possess certain Schedule I or II controlled dangerous substances, large amounts as specified in CR, § 5-612	20Y/5Y MM / IIIB	No change <sup>10</sup>
CR, § 7-104(g)(1)(iii)	<b>Theft, Crimes Involving</b> Felony theft or theft-scheme, \$100,000 or greater	25Y / II	20Y / III
CR, § 7-104(g)(1)(ii)	<b>Theft, Crimes Involving</b> Felony theft or theft-scheme, at least [\$10,000] <b>\$25,000</b> but less than \$100,000	15Y / IV	10Y / V
CR, § 7-104(g)(1)(i)	<b>Theft, Crimes Involving</b> Felony theft or theft-scheme, at least [\$1,000] <b>\$1,500</b> but less than [\$10,000] <b>\$25,000</b>	10Y / V	5Y / VI
CR, § 7-104(g)(2)(i)(1)	<b>Theft, Crimes Involving</b> Misdemeanor theft or theft-scheme, <b>at least \$100 but</b> less than [\$1,000] <b>\$1,500</b> , 1 <sup>st</sup> offense	18M / VII	6M / VII

<sup>9</sup> Pursuant to the JRA, the two-year mandatory minimum for the subsequent unlawful distribution, manufacture, etc. of non-narcotics (CR, § 5-607(b)) was repealed from the laws of Maryland. The same penalty for the unlawful distribution, manufacture, etc. of non-narcotics, outlined in CR, § 5-607(a) and in effect prior to October 1, 2017, remains in effect for both first-time and subsequent offenders. As such, the Commission voted to maintain the offense's existing seriousness category.

<sup>10</sup> The JRA increased the amount of crack cocaine to be the same as the amount of powder cocaine that is required to trigger enhanced penalties for defendants convicted under CR, § 5-612 (i.e., 448 grams). Otherwise the penalty for a violation of CR, § 5-612, in effect prior to October 1, 2017, remains the same. As such, the Commission voted to maintain the offense's existing seriousness category.

Annotated Code of Maryland	Offense	Prior Stat. Max. / Seriousness Category	New Stat. Max. / Seriousness Category
CR, § 7-104(g)(2)(i)(2)	<b>Theft, Crimes Involving</b> Misdemeanor theft or theft-scheme, <b>at least \$100 but less than [\$1,000] \$1,500</b> , 2 <sup>nd</sup> or subsequent offense	18M / VII	1Y / VII
CR, § 7-104(g)(4)	<b>Theft, Crimes Involving</b> Misdemeanor theft or theft-scheme, less than [\$1,000] <b>\$1,500</b> , [3 <sup>rd</sup> ] <b>5<sup>th</sup></b> or subsequent offense	5Y / VI	No change <sup>11</sup>
CR, § 8-103(b) CR, § 8-106(a)(3) (penalty)	<b>Bad Check</b> Felony bad check, \$100,000 or greater	25Y / V	20Y / III <sup>12</sup>
CR, § 8-103 CR, § 8-106(a)(2) (penalty)	<b>Bad Check</b> Felony bad check, at least [\$10,000] <b>\$25,000</b> but less than \$100,000	15Y / V	10Y / V
CR, § 8-103 CR, § 8-106(a)(1) (penalty)	<b>Bad Check</b> Felony bad check, at least [\$1,000] <b>\$1,500</b> but less than [\$10,000] <b>\$25,000</b>	10Y / V	5Y / VI
CR, § 8-103 CR, § 8-106(c) (penalty)	<b>Bad Check</b> Misdemeanor bad check, <b>at least \$100 but less than [\$1,000] \$1,500</b>	18M / VII	1Y / VII
CR, § 8-103 CR, § 8-106(b) (penalty)	<b>Bad Check</b> Multiple bad checks within a 30-day period, each [less than \$1,000] <b>at least \$1,500 but less than \$25,000</b> and totaling [\$1,000 or more] <b>at least \$1,500 but less than \$25,000</b>	10Y / V	5Y / VI
CR, § 8-206(c)(1)(iii) CR, § 8-207(b)(1)(iii) CR, § 8-209(b)(1)(iii)	<b>Credit Card Crimes</b> Felony credit card crimes, \$100,000 or greater	25Y / V	20Y / III <sup>13</sup>

<sup>11</sup> The JRA increased the dollar amount threshold and number of prior convictions required for conviction as a subsequent offender under CR, § 7-104(g)(4). Otherwise the penalty for a violation of CR, § 7-104(g)(4), in effect prior to October 1, 2017, remains the same. As such, the Commission voted to maintain the offense's existing seriousness category.

<sup>12</sup> To provide consistency with other theft- and fraud-related offenses, the Commission voted to increase the seriousness category for violations of CR, § 8-103(b) and CR, § 8-106(a)(3).

<sup>13</sup> To provide consistency with other theft- and fraud-related offenses, the Commission voted to increase the seriousness category for violations of CR, §§ 8-206(c)(1)(iii), 8-207(b)(1)(iii), and 8-209(b)(1)(iii).

Annotated Code of Maryland	Offense	Prior Stat. Max. / Seriousness Category	New Stat. Max. / Seriousness Category
CR, § 8-206(c)(1)(ii) CR, § 8-207(b)(1)(ii) CR, § 8-209(b)(1)(ii)	<b>Credit Card Crimes</b> Felony credit card crimes, at least <b>[\$10,000] <u>\$25,000</u></b> but less than \$100,000	15Y / V	10Y / V
CR, § 8-206(c)(1)(i) CR, § 8-207(b)(1)(i) CR, § 8-209(b)(1)(i)	<b>Credit Card Crimes</b> Felony credit card crimes, at least <b>[\$1,000] <u>\$1,500</u></b> but less than <b>[\$10,000] <u>\$25,000</u></b>	10Y / V	5Y / VI
CR, § 8-206(c)(2) CR, § 8-207(b)(2) CR, § 8-209(b)(2)	<b>Credit Card Crimes</b> Misdemeanor credit card crimes, <b>at least <u>\$100 but</u></b> less than <b>[\$1,000] <u>\$1,500</u></b>	18M / VII	1Y / VII
CR, § 8-206(c)(3) CR, § 8-207(b)(3) CR, § 8-209(b)(3)	<b>Credit Card Crimes</b> Misdemeanor credit card crimes, [not exceeding] <b>less than</b> \$100	90 days / VII	No change <sup>14</sup>
CR, § 8-301(b), (c) CR, § 8-301(g)(1)(iii) (penalty)	<b>Identity Fraud</b> Possess, obtain personally identifying information or willfully assume the identity of another, benefit \$100,000 or greater	25Y / II	20Y / III
CR, § 8-301(b), (c) CR, § 8-301(g)(1)(ii) (penalty)	<b>Identity Fraud</b> Possess, obtain personally identifying information or willfully assume the identity of another, benefit at least <b>[\$10,000] <u>\$25,000</u></b> but less than \$100,000	15Y / IV	10Y / V
CR, § 8-301(b), (c) CR, § 8-301(g)(1)(i) (penalty)	<b>Identity Fraud</b> Possess, obtain personally identifying information or willfully assume the identity of another, benefit at least <b>[\$1,000] <u>\$1,500</u></b> but less than <b>[\$10,000] <u>\$25,000</u></b>	10Y / V	5Y / VI
CR, § 8-301(b), (c) CR, § 8-301(g)(2) (penalty)	<b>Identity Fraud</b> Possess, obtain personally identifying information or willfully assume the identity of another, benefit <b>at least <u>\$100 but</u></b> less than <b>[\$1,000] <u>\$1,500</u></b>	18M / VII	1Y / VII

<sup>14</sup> The JRA made minor revisions to the language contained in CR, §§ 8-206(c)(3), 8-207(b)(3), and 8-209(b)(3). Otherwise the penalty for violations of CR, §§ 8-206(c)(3), 8-207(b)(3), and 8-209(b)(3), in effect prior to October 1, 2017, remains the same. As such, the Commission voted to maintain the offense's existing seriousness category.

Annotated Code of Maryland	Offense	Prior Stat. Max. / Seriousness Category	New Stat. Max. / Seriousness Category
CR, § 8-301(d) CR, § 8-301(g)(1)(iii) (penalty)	<b>Identity Fraud</b> Use a re-encoder or skimming device for purpose of identity theft, benefit \$100,000 or greater	25Y / II	20Y / III
CR, § 8-301(d) CR, § 8-301(g)(1)(ii) (penalty)	<b>Identity Fraud</b> Use a re-encoder or skimming device for purpose of identity theft, benefit at least <u>[\$10,000] \$25,000</u> but less than \$100,000	15Y / IV	10Y / V
CR, § 8-301(d) CR, § 8-301(g)(1)(i) (penalty)	<b>Identity Fraud</b> Use a re-encoder or skimming device for purpose of identity theft, benefit at least <u>[\$1,000] \$1,500</u> but less than <u>[\$10,000] \$25,000</u>	10Y / V	5Y / VI
CR, § 8-301(d) CR, § 8-301(g)(2) (penalty)	<b>Identity Fraud</b> Use a re-encoder or skimming device for purpose of identity theft, benefit <u>at least \$100 but</u> less than <u>[\$1,000] \$1,500</u>	18M / VII	1Y / VII
CR, § 8-301(g)(3)	<b>Identity Fraud</b> Intent to manufacture, distribute, or dispense personally identifying information	15Y / V	10Y / V
CR, § 8-301(c)(1), (f) CR, § 8-301(g)(4) (penalty)	<b>Identity Fraud</b> Falsely represent self as another person	18M / VII	1Y / VII
CR, § 8-301(b-1) CR, § 8-301(g)(4) (penalty)	<b>Identity Fraud</b> Use an interactive computer service to disclose personal identifying information of an individual in order to annoy, threaten, embarrass, or harass	18M / VII	1Y / VII
CR, § 8-301(e) CR, § 8-301(g)(4) (penalty)	<b>Identity Fraud</b> Possess, obtain, or help another obtain a re-encoder or skimming device for purpose of identity theft	18M / VII	1Y / VII

Annotated Code of Maryland	Offense	Prior Stat. Max. / Seriousness Category	New Stat. Max. / Seriousness Category
CR, § 8-509 CR, § 8-510 CR, § 8-511 CR, § 8-512 CR, § 8-513 CR, § 8-514 CR, § 8-515 CR, § 8-516(c) (penalty)	<b>Public Fraud</b> State health plan fraud, [ \$1,000 ] <b><u>\$1,500</u></b> or greater	5Y / V	No change <sup>15</sup>
CR, § 8-509 CR, § 8-510 CR, § 8-511 CR, § 8-512 CR, § 8-513 CR, § 8-514 CR, § 8-515 CR, § 8-516(d) (penalty)	<b>Public Fraud</b> State health plan fraud, less than [ \$1,000 ] <b><u>\$1,500</u></b>	3Y / VII	No change <sup>16</sup>
CR, § 8-611(c)	<b>Counterfeiting</b> Trademark counterfeiting, [ \$1,000 ] <b><u>\$1,500</u></b> or greater	15Y / V	10Y / V
CR, § 8-611(d)	<b>Counterfeiting</b> Trademark counterfeiting, less than [ \$1,000 ] <b><u>\$1,500</u></b>	18M / VII	1Y / VII
CR, § 8-801(c)(1)(iii)	<b>Fraud, Financial Crimes Against Vulnerable Adults</b> Obtain property of vulnerable adult or an individual at least 68 years old by deception, intimidation, or undue influence, \$100,000 or greater	25Y / II	20Y / III

<sup>15</sup> The JRA increased the dollar amount threshold for violations of CR, §§ 8-509 through 8-515 and 8-516(c). Otherwise the penalty for violations of CR, §§ 8-509 through 8-515 and 8-516(c), in effect prior to October 1, 2017, remains the same. As such, the Commission voted to maintain the offense's existing seriousness category.

<sup>16</sup> The JRA increased the dollar amount threshold for violations of CR, §§ 8-509 through 8-515 and 8-516(d). Otherwise the penalty for violations of CR, §§ 8-509 through 8-515 and 8-516(d), in effect prior to October 1, 2017, remains the same. As such, the Commission voted to maintain the offense's existing seriousness category.

Annotated Code of Maryland	Offense	Prior Stat. Max. / Seriousness Category	New Stat. Max. / Seriousness Category
CR, § 8-801(c)(1)(ii)	<b>Fraud, Financial Crimes Against Vulnerable Adults</b> Obtain property of vulnerable adult or an individual at least 68 years old by deception, intimidation, or undue influence, at least <del>[\$10,000]</del> <b>\$25,000</b> but less than \$100,000	15Y / IV	10Y / V
CR, § 8-801(c)(1)(i)	<b>Fraud, Financial Crimes Against Vulnerable Adults</b> Obtain property of vulnerable adult or an individual at least 68 years old by deception, intimidation, or undue influence, at least <del>[\$1,000]</del> <b>\$1,500</b> but less than <del>[\$10,000]</del> <b>\$25,000</b>	10Y / V	5Y / VI
CR, § 8-801(c)(2)	<b>Fraud, Financial Crimes Against Vulnerable Adults</b> Obtain property of vulnerable adult or an individual at least 68 years old by deception, intimidation, or undue influence, less than <del>[\$1,000]</del> <b>\$1,500</b>	18M / VII	1Y / VII
TR, § 16-303(h), (i) TR, § 27-101(gg) (penalty) <sup>17</sup>	<b>Motor Vehicle Offense</b> Driving while license is suspended under certain provisions in this or another state	2M / Default to VII	Fine only / N/A
CR, § 2-204	<b>Murder</b> 2 <sup>nd</sup> degree	30Y / II	40Y / II
CR, § 3-601(b)(2)(iii)	<b>Abuse and Other Offensive Conduct</b> Child Abuse—physical, with death, victim younger than 13 years old	40Y / II	Life / I
CR, § 3-601(b)(2)(ii)	<b>Abuse and Other Offensive Conduct</b> Child Abuse—physical, with death, victim at least 13 years old	40Y / II	No change <sup>18</sup>
CR, § 3-601(c)(2)	<b>Abuse and Other Offensive Conduct</b> Child Abuse—physical, with death, previous conviction for child abuse	40Y / II	Life / I

<sup>17</sup> Violations of TR, § 16-103 (h) and (i) were not contained in the Guidelines Offense Table as, through September 30, 2016, both offenses had a statutory maximum of one year or less. By MSCCSP rule, any offense with a maximum incarceration penalty of one year or less is automatically assigned a seriousness category VII classification (COMAR 14.22.01.09B(2)(f)) unless the Commission chooses to adopt a different seriousness category. Violations of TR, § 16-103 (h) and (i) sentenced on or after October 1, 2017, are not guidelines-eligible offenses, as they carry no possible penalty of incarceration. As such, they are not included in the Guidelines Offense Table.

<sup>18</sup> Pursuant to the JRA, the statutory maximum for child abuse resulting in the death of a victim younger than 13 years old increased from 40 years to life. The statutory maximum for child abuse resulting in the death of a victim 13 years or older remains 40 years. As such, the Commission voted to maintain the offense's existing seriousness category when the victim is 13 years or older.

Annotated Code of Maryland	Offense	Prior Stat. Max. / Seriousness Category	New Stat. Max. / Seriousness Category
CR, § 9-802	<b>Criminal Gang Offenses</b> Use of or threat of force to coerce participation or prevent leaving gang	2Y / VII	No change <sup>19</sup>
CR, § 9-803	<b>Criminal Gang Offenses</b> Use of or threat of force to coerce participation or prevent leaving gang in school or within 1,000 feet of school property	4Y / VI	No change <sup>20</sup>
CR, § 9-804(f)(1)(i)	<b>Criminal Gang Offenses</b> Participate as member of criminal gang in commission of crime; <b><u>in receipt and use or investment, of proceeds of \$10,000 or more from underlying crime in the acquisition of real property or establishment or operation of any enterprise; in acquisition or maintenance of any interest or control of any enterprise or property through an underlying crime</u></b>	10Y / One category more serious than most serious underlying offense. If no conviction on underlying offense, category=IV	15Y / One category more serious than most serious underlying offense. If no conviction on underlying offense, category=IV
CR, § 9-804(f)(1)(ii)	<b>Criminal Gang Offenses</b> Participate as member of criminal gang in commission of crime—resulting in death of victim	20Y / One category more serious than most serious underlying offense. If no conviction on underlying offense, category=III	25Y / One category more serious than most serious underlying offense. If no conviction on underlying offense, category=III
CR, § 9-805(b)	<b>Criminal Gang Offenses</b> Organize, supervise, finance, or manage a criminal gang	20Y / III	No change <sup>21</sup>

<sup>19</sup> The JRA increased the maximum fine for a violation of CR, § 9-802 from \$1,000 to \$10,000. The JRA made no change to the maximum period of incarceration for a violation of CR, § 9-802. As such, the Commission voted to maintain the offense's existing seriousness category.

<sup>20</sup> The JRA increased the maximum fine for a violation of CR, § 9-803 from \$4,000 to \$20,000. The JRA made no change to the maximum period of incarceration for a violation of CR, § 9-803. As such, the Commission voted to maintain the offense's existing seriousness category.

<sup>21</sup> The JRA increased the maximum fine for a violation of CR, § 9-805(b) from \$100,000 to \$1,000,000. The JRA made no change to the maximum period of incarceration for violation of CR, § 9-805(b). As such, the Commission voted to maintain the offense's existing seriousness category.

---

## **Revised Language in the Maryland Sentencing Guidelines Manual (MSGM) Regarding Judicial Responsibilities in Reviewing Guidelines Worksheets**

---

The MSGM, Version 1 through Version 8.2, instructed “regardless of who completes the sentencing guidelines worksheet, the judge shall review the worksheets for completeness and for accuracy.” In the fall of 2016, a circuit court judge in Maryland expressed concern regarding this language. The judge was concerned that, by submitting a sentencing guidelines worksheet, the judge would be verifying the accuracy of factors that judges do not inquire about and do not certify as accurate, specifically the race of a defendant. The MSCCSP assured the judge that it was not the intent of this language or the MSCCSP that judges certify as accurate a defendant’s race or other demographic information.

In light of the judge’s concerns, the Commission at its July 11, 2017, meeting, adopted the following language to better reflect that judges shall consider the presented guidelines at sentencing, but that judges are not expected to review the worksheet in its entirety or confirm its accuracy and completeness: *Regardless of who completes the worksheet, the court shall review the worksheet to confirm that the guidelines reflected on the worksheet were considered in the respective case.* These amendments were promulgated through COMAR and adopted effective October 1, 2017 (see MSGM, Version 9.0, Section 3.5).

---

## **Adoption of New Policy for Posting Testimony from the Public Comments Hearing**

---

Since 2011, the MSCCSP has requested that individuals testifying at its annual Public Comments Hearing submit written testimony in advance of the hearing. At the December 13, 2011, Public Comments Hearing, a motion passed to include written testimony from the 2011 Public Comments Hearing in the Commission’s 2011 Annual Report. Following feedback received from readers of the 2011 Annual Report, the MSCCSP opted to include all future written testimony in an appendix to the Public Comments Hearing minutes, published each year to the MSCCSP’s website following the hearing. The MSCCSP followed this practice for the Public Comments Hearings held in December 2012 through December 2016.

Written testimony is submitted to the MSCCSP prior to the Public Comments Hearing, typically via postal mail or email. The 2011 Annual Report contained unredacted copies of electronically submitted testimony. The Public Comments Hearing minutes published to the website following the hearings in 2012 through 2016 included unredacted copies of both electronic and paper

testimony. As such, some testimony published from 2011 through 2016, in both the Public Comments Hearing minutes and the MSCSSP's Annual Reports, contained personal identifying information, including physical addresses, email addresses, phone numbers, and inmate identification numbers. Additionally, the Public Comments Hearing minutes posted to the website from 2007 to 2010 also referenced personal identifying information in summarized testimony.

In 2017, an individual contacted the MSCCSP to request that the MSCCSP remove from its website written testimony submitted by him and several family members. This individual expressed concern that the testimony contained personal identifying information and that another individual had accessed the testimony and reported certain information to a family member's employer. The disclosure was causing significant stress in the individual's family. After confirming that its removal would not violate any provisions of Maryland's Public Information Act (PIA), the MSCCSP removed the referenced testimony from the written testimony published on the MSCCSP's website.

To avoid issues in the future, at the December 11, 2017, meeting, the Commission adopted a new policy pertaining to the publication of written testimony received in response to its annual Public Comments Hearings. Pursuant to the new policy, the MSCCSP will include a summary of written testimony received in response to all future Public Comments Hearings in the hearing minutes published on its website. No individual testimony or personal identifying information of private citizens will be included in the hearing minutes published on the website after December 11, 2017. The MSCCSP will continue to maintain electronic copies of written testimony at its College Park office. For testimony from Public Comments Hearings published to the MSCCSP's website prior to 2017, the MSCCSP will redact all personal identifying information from testimony provided by private citizens. Name, job title, and agency will be retained, in unredacted form, in testimony provided by experts or individuals on behalf of governmental agencies.

In December 2017 and January 2018, the MSCCSP redacted all applicable personal identifying information from the Public Comments Hearing minutes from 2007 through 2016 and the MSCCSP's Annual Reports from 2011 through 2016. Redacted copies of the Public Comments Hearing minutes and the MSCCSP's Annual Reports are currently available on the website.

---

## Study on Alternatives to Incarceration

---

The Justice Reinvestment Act (JRA) (Senate Bill 1005/Ch.515, Sec. 8, 2016) required the MSCCSP to study how more alternatives to incarceration may be included in the sentencing guidelines and to submit a report of the findings and recommendations to the Justice Reinvestment Oversight Board, Governor, and General Assembly by January 1, 2018. The Justice Reinvestment Coordinating Council's (JRCC) final report, which provided the framework for the formulation of the JRA, suggests that judges must depart from the sentencing guidelines to impose alternatives to incarceration. However, pursuant to COMAR 14.22.01.17, sentences to corrections options, such as home detention, drug court, Health General Article (HG), § 8-507 commitments, and other residential treatment programs, are guidelines compliant, if the initial sentence (including any suspended sentence) falls within or above the applicable guidelines range and the case does not include a crime of violence (as defined under CR, § 14-101), child sexual abuse, or escape.

The MSCCSP had several discussions to determine the best way to proceed with the JRA's requirements. In addition to discussions with the full Commission, over multiple Commission meetings, the Guidelines Subcommittee invited special guests to assist in the development and review of the required report. The MSCCSP reviewed its previous studies of intermediate sanction programs or "*corrections options*" or "*correctional options*" programs and considered how other states incorporate alternatives to incarceration within their sentencing guidelines.

To assess how more alternatives to incarceration may be included in Maryland's sentencing guidelines, the MSCCSP decided to gauge the currently available alternatives to incarceration on a jurisdiction-by-jurisdiction basis. With the help of the Administrative Office of the Courts (AOC), the MSCCSP created a survey to assess alternatives to incarceration available to circuit court judges, which was distributed, via e-mail, to circuit court administrative judges, Parole and Probation field supervisors, and local correctional administrators in each of Maryland's 24 jurisdictions.

The survey asked respondents to indicate whether six specific Maryland Problem Solving Courts and 26 specific alternatives to incarceration were available within their respective jurisdiction. When appropriate, the survey required the respondent to provide follow-up information, such as whether the program was county-monitored or privately-monitored and the program's name. Additionally, the survey asked respondents to indicate which programs were the most frequently used with split sentences and probation, which programs they felt were the

most effective, the general criteria they believed should be used to identify offenders for alternatives to incarceration, and whether they would like to see additional programming within their jurisdiction.

A potential of 72 responses existed and the MSCCSP received at least one response from each jurisdiction. The MSCCSP received 44 total responses. The respondents included 17 circuit court administrative judges, 13 local correctional administrators, and 14 Parole and Probation Field Supervisor IIs. For the majority of the jurisdictions (62.5%), the MSCCSP received more than one response (including five jurisdictions from which the MSCCSP received three responses).

The primary findings from the survey included the following:

- Maryland has a robust offering of alternatives to incarceration, but the availability of programs varies from jurisdiction to jurisdiction.
- There were discrepancies within all jurisdictions where more than one respondent answered.
- There are a number of programs available statewide, including HG, § 8-507 commitments, outpatient drug treatment programs, Drinking Driver Monitor Program, and anger management programs.
- Twenty-three of 24 jurisdictions indicated that a variety of other alternatives to incarceration were available within their jurisdiction, including electronic monitoring, home confinement, work release, community service, mental health treatment programs, and parenting classes.
- Respondents felt generally that drug and alcohol treatment programs were the most effective alternatives to incarceration.
- The majority of respondents (68%) want to see additional alternatives to incarceration within their jurisdictions. Specifically, 23% of respondents indicated they would like to see additional drug treatment programs and 20% of respondents indicated they would like to see additional mental health treatment programs within their respective jurisdictions.

To gain a better understanding of program availability, the MSCCSP communicated with approximately 60% of the programs identified in the survey responses to determine the program's target population, factors that could disqualify an individual from the program, the

program's capacity, and fees associated with the program. Based on the information received from the survey and a review of both current guidelines rules and past MSCCSP studies, the MSCCSP made the following recommendations for the MSCCSP and other agencies to support further the use of alternatives to incarceration for appropriate offenders.

Recommended actions for the MSCCSP:

- 1. Expand the definition of “corrections options” to include specified sentences with required substance abuse treatment as guidelines-compliant.** Effective October 1, 2017, the MSCCSP expanded the definition of corrections options so that a sentence, with required substance abuse treatment, for the possession, administration, obtainment, etc. of controlled dangerous substances (CDS), outlined currently in CR, § 5-601(c) and pursuant to CR, § 5-601(e)(3), be considered a corrections options program when determining guidelines compliance.
- 2. Educate judges, court staff, and legal practitioners on guidelines-compliant sentences with respect to corrections options.** The MSCCSP will implement a plan to better inform judges, court personnel, prosecutors, and defense attorneys that judges do not have to depart from the guidelines in order to utilize alternatives to incarceration. Judges may impose a guidelines-compliant sentence when they chose to suspend a sentence and impose specified corrections options.
- 3. Adopt a policy statement encouraging the use of alternatives to incarceration, where appropriate.** On December 11, 2017, the MSCCSP voted to adopt the following policy statement encouraging the use of alternatives to incarceration, where appropriate:

The MSCCSP encourages judges to consider at sentencing evidence-based or innovative alternatives to incarceration that are appropriate for defendants based on their specific risks and needs. The mandate of Maryland's Justice Reinvestment Act (JRA) (Chapter 515 of 2016) that the Division of Parole and Probation administer risk-needs assessments on individuals under their supervision and develop individualized case plans that take into consideration evidence-based or innovative programs, highlights the value the State places on the use of alternative for suitable offenders.<sup>22</sup> This approach is also consistent with research on the effectiveness of alternatives to incarceration relative to imprisonment that has overwhelmingly concluded that imprisonment does not reduce re-offending relative to community sanctions (Villettaz, Gillieron, and Killias, 2015). The research findings, when combined with the collateral consequences experienced by incarcerated individuals and their

---

<sup>22</sup> Evidence-based programs and practices are programs proven by scientific research to reliably produce reductions in recidivism (JRA 2016). Innovative programs and practices are programs that do not meet the higher standards of the evidence-based practices, but preliminary research or data indicate they will reduce the likelihood of offender recidivism (JRA 2016).

family members (Collateral Consequences Workgroup, 2016), suggest there is a potential public safety and community benefit to limiting exposure to incarceration, especially for offenders who are a low-risk to recidivate.

Therefore, in accordance with the JRA and criminological research, the MSCCSP recommends that judges consider utilizing alternatives to incarceration at sentencing, provided that such alternatives are appropriate based on the defendant's specific risks and needs. For chemically dependent offenders, the MSCCSP encourages treatment in lieu of incarceration.

4. **Collect additional data on sentences utilizing alternatives to incarceration.** The MSCCSP will expand the sentencing component of MAGS to collect additional details on sentences utilizing alternatives to incarceration. After multiple years of data collection, the MSCCSP will have sufficient data to determine which sentences are most effective in terms of reducing recidivism for specific types of offenders. The MSCCSP could use more detailed data to inform future discussions on revising the current definition of corrections options to include other effective and promising available alternatives to incarceration.

Recommended actions for other State agencies and local entities:

5. **Create a web-based alternatives to incarceration locator service.** The reported discrepancies in available alternatives to incarceration that were identified in the MSCCSP analysis of the survey responses and follow-up research is an important issue in and of itself. The MSCCSP recommends that a State agency be funded to create a web-based locator service (similar to the [Maryland Community Services Locator](#)) to maintain and disseminate information on available alternatives to incarceration by jurisdiction.
6. **Conduct an analysis of available programming for offenders and identify programming gaps.** The State should fund a State agency or independent researcher to complete a comprehensive analysis of evidence-based programming available for offenders of various risk and needs levels at various stages of the criminal justice process from arrest through reentry.
7. **Expand the scope and use of the pre-sentence investigation report.** A multi-agency collaboration should be utilized to reform the structure of the PSI report to include a validated risk-needs assessment and expand the use of the PSI report to cases involving mid-level offenders who are considered generally "on the fence" in terms of incarceration.

The full [Study on Alternatives to Incarceration](#) report, including prior research on identifying effective alternatives to incarceration, resources available to assist decision-makers in their selection of effective alternatives to incarceration, how other states include alternatives to incarceration in their sentencing guidelines, and specific alternatives to incarceration available in Maryland, can be found on the MSCCSP's website.

## **Juvenile Delinquency Score Project**

---

Juvenile delinquency is a component in calculating a defendant's offender score. Included in the juvenile delinquency score is a determination as to whether the defendant has ever been committed to state custody. At the Commission's 2012 Public Comments Hearing, an assistant public defender expressed concerns regarding purportedly inconsistent application of the term "commitment to state custody." Juvenile records throughout the State, he asserted, use the term to indicate various different types of punishment. The commenter stated that in one locale in Maryland, "commitment to state custody" might indicate that a judge ordered a juvenile to a secure detention facility. In another area, the same term might indicate that a court assigned in-home treatment services to the juvenile. These two juvenile punishments are very different and carry different implications concerning the judgment of the juvenile court. Nonetheless, since both punishments are "commitment to state custody," judges in separate jurisdictions may not account for the distinctions in use when considering a person's juvenile record during an adult sentencing hearing. Inconsistent use could have unintended consequences on the calculation of an offender score, thereby affecting the recommended guidelines and the sentence imposed.

In light of those concerns, the MSCCSP agreed to examine empirically how juvenile records affect the sentencing guidelines and which aspects of a juvenile record in Maryland predict later adult offending. The MSCCSP collaborated with the Maryland Data Analysis Center (MDAC) at the University of Maryland, College Park on this project. The University of Maryland's Institutional Review Board approved the research in May 2015. Subsequently, the researchers at the MDAC submitted applications to Maryland's Department of Juvenile Services (DJS) and the DPSCS for access to juvenile data and adult recidivism data, respectively. Both the DPSCS and DJS approved the applications. MDAC received the adult recidivism data in 2015 and the juvenile data in early 2016.

The project proceeded in three phases during 2016 and 2017, culminating in the development and validation of nine alternative juvenile delinquency scoring methods in May 2017. The Commission evaluated each of the nine alternative scoring methods based on three criteria: (1)

does the score predict adult recidivism; (2) does the score effectively differentiate between offenders at low-, medium-, and high-risk of recidivism; and (3) does the score perform similarly across racial groups. The Commission identified one alternative method, referred to as Adjudications #2, which met all three criteria and performed as well or better than the current juvenile delinquency scoring scheme.

At its July 10, 2017, meeting, the Commission voted to adopt the following four questions to guide its consideration of revisions to the juvenile delinquency scoring method: (1) Should the Maryland sentencing guidelines continue to account for a juvenile record when calculating the offender score? (2) If the MSCCSP chooses to maintain a juvenile component in the sentencing guidelines, should the instructions for the juvenile delinquency score (referenced in the MSGM) be revised? (3) Should the instructions for the juvenile delinquency score limit the examination of the juvenile record to the five years preceding the date of the current offense (a period referred to as the “five-year lookback window”)? (4) Should an alternative scoring system be adopted?

At its August 30, 2017, meeting, the Guidelines Subcommittee reviewed the findings from each of the three phases of the juvenile delinquency score project, including each of the alternative scoring methods, and agreed to present to the Commission four recommendations in reference to the four agreed upon questions. At the Commission’s September 19, 2017, meeting, the Guidelines Subcommittee recommended to the Commission that: (1) the Maryland sentencing guidelines continue to account for a juvenile record when calculating the offender score; (2) the instructions for the juvenile delinquency score in the MSGM be revised to provide greater clarity to practitioners; (3) the instructions for the juvenile delinquency score limit the examination of the juvenile record to the five years preceding the date of the current offense (i.e., the five-year lookback window); and (4) the alternative scoring method referred to as Adjudications #2 be adopted. At its September 19 meeting, the Commission voted to adopt each of the four recommendations.

The Commission solicited public feedback regarding the newly adopted juvenile delinquency scoring method at its December 11, 2017, Public Comments Hearing. At the Public Comments Hearing, the Commission heard testimony both in support of and in opposition to the newly adopted juvenile delinquency scoring method.

At its December 11, 2017, business meeting, the Commission voted to adopt two additional clarifications to the juvenile delinquency scoring method. First, the Commission voted to define

the five-year lookback window, provided for in the juvenile delinquency score instructions, as the five years prior to the date of the defendant's *most recent* instant offense. This definition provides for scenarios in which a defendant is being sentenced in front of one judge on the same day for multiple offenses committed on different dates.

Second, the Commission voted to define "findings of a delinquent act," referenced in the juvenile delinquency score instructions, as a finding of facts sustained at a juvenile adjudicatory hearing,<sup>23</sup> and to also instruct practitioners that if the defense or state can show that a youth was found facts sustained but not adjudicated delinquent at a juvenile disposition hearing,<sup>24</sup> the finding of a delinquent act shall not count towards the juvenile delinquency score. This definition provides relief for the infrequent scenarios in which a juvenile is found facts sustained, but not subsequently adjudicated delinquent.

Table 8, below, provides a comparison of the current and newly adopted instructions for calculating the juvenile delinquency scoring component of the offender score.

**Table 8. Comparison of Current and Newly Adopted Instructions for Calculating the Juvenile Delinquency Score**

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

As with any changes to the sentencing guidelines, the Commission must promulgate the above revisions through COMAR. Promulgation is a multi-step process occurring over several months, and regulations do not become effective until the end of the process. In addition to the COMAR promulgation process, MAGS will require programming changes to reflect the revisions to the juvenile delinquency score. The MSCCSP staff will also need to update all of the various

<sup>23</sup> Pursuant to the definition of juvenile adjudicatory hearing outlined in Courts and Judicial Proceedings Article (CJ), §§ 3-8A-01 and 3-8A-18.

<sup>24</sup> Pursuant to the definition of juvenile disposition hearing outlined in CJ, §§ 3-8A-01 and 3-8A-19.

sentencing guidelines instructional materials, including the MSGM, the MAGS User Manual, and the MSCCSP website, to reflect the guidelines revisions. Given these necessary steps, July 1, 2018, is the anticipated effective date for final adoption of the new juvenile delinquency scoring method.

## **Maryland Automated Guidelines System (MAGS)**

---

MAGS is a web-based application that permits electronic completion and submission of sentencing guidelines worksheets. MAGS calculates the appropriate sentencing guidelines range based on the offense and offender characteristics. The automated system was designed to mimic the flow of the paper guidelines worksheet. The State's Attorney's Office, Office of the Attorney General, Office of the Maryland State Prosecutor, or a Parole and Probation agent initiates the worksheet in MAGS. Defense attorneys have the ability to view, but not edit the initiated worksheet. MAGS creates a printable PDF of the sentencing guidelines worksheet that can be presented at sentencing. The sentencing judge or his/her designee enters the appropriate sentence information and then electronically submits the completed worksheet and provides a copy to the Clerk's Office for distribution. MAGS provides many benefits in comparison to the paper worksheet process, including the following: simplification of sentencing guidelines calculation, reduction in sentencing guidelines calculation errors, improvement in the accuracy and completeness of data, more timely and accurate assessment of sentencing policy and practice, and offering a mechanism to monitor completion and submission of guidelines worksheets.

MAGS was first deployed as a pilot project in the Montgomery County Circuit Court in April 2012. Effective January 27, 2014, the Conference of Circuit Judges (CCJ) approved the permanent adoption of MAGS through a gradual roll-out on a jurisdiction-by-jurisdiction basis. At year-end 2017, MAGS was available for use in 16 of the 24 circuit courts, accounting for approximately 50% of sentencing guidelines worksheets received by the MSCCSP. MAGS is accessible from the MSCCSP website at: [www.msccsp.org/MAGS](http://www.msccsp.org/MAGS) (see Image 1).

Image 1. MAGS page of MSCCSP website



The key tasks completed in 2017 to continue the development and deployment of MAGS are summarized below.

**January 1, 2017:** The Allegany and Garrett County Circuit Courts began use of MAGS to initiate, edit, and submit all official sentencing guidelines worksheets.

**April 1, 2017:** The Governor's Office of Crime Control and Prevention (GOCCP) awarded a one-year Byrne Justice Assistance Grant (BJAG) to the DPSCS, on behalf of the MSCCSP, to create a dedicated funding source for information technology support and enhancements to the MAGS application. With support of the BJAG, and in collaboration with the programming assistance provided by the DPSCS, the MSCCSP is set to deploy an updated version of MAGS (MAGS 6.0) in early 2018. MAGS 6.0 will include new enhancements and features requested by criminal justice practitioners who utilize the application, to promote an improved user experience.

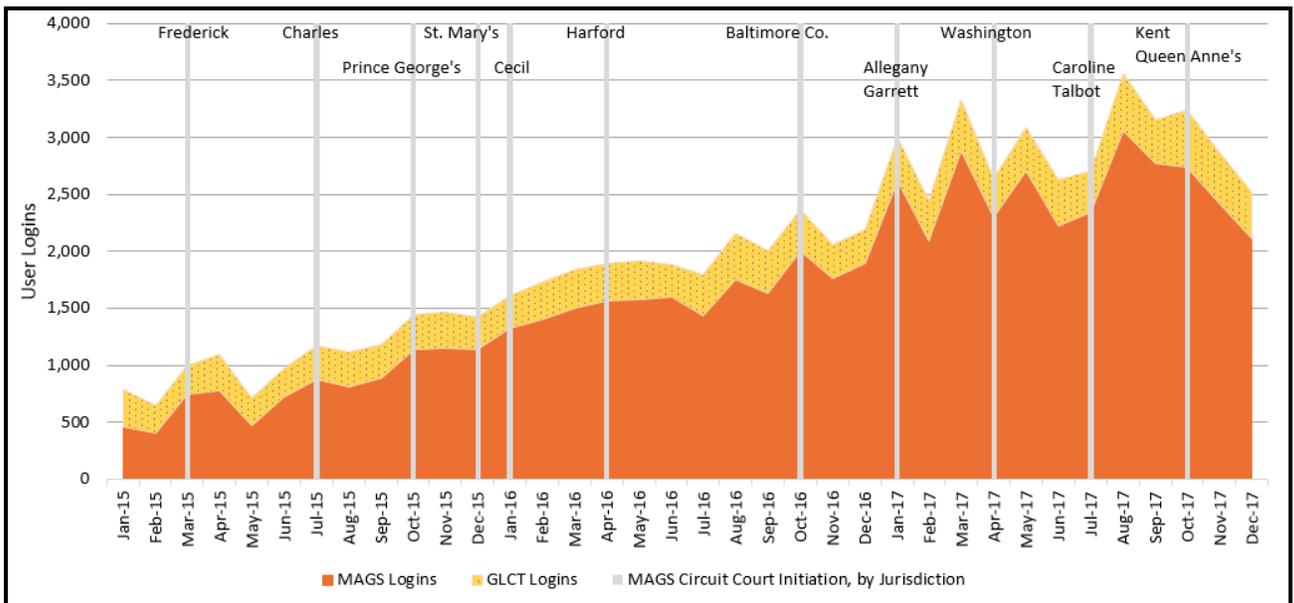
**April 1, 2017:** The Washington County Circuit Court began use of MAGS to initiate, edit, and submit all official sentencing guidelines worksheets.

**July 1, 2017:** The Caroline and Talbot County Circuit Courts began use of MAGS to initiate, edit, and submit all official sentencing guidelines worksheets.

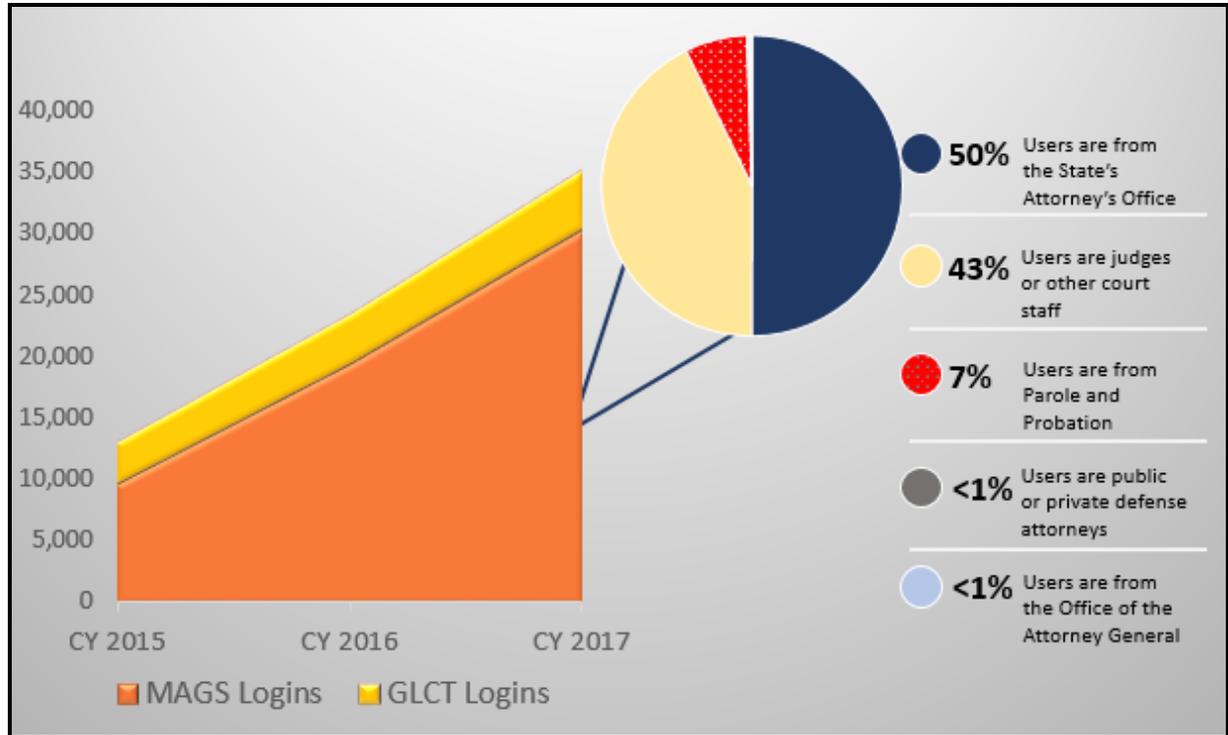
**October 1, 2017:** The Kent and Queen Anne’s County Circuit Courts began use of MAGS to initiate, edit, and submit all official sentencing guidelines worksheets.

In calendar year 2017, there were approximately 30,000 MAGS user logins, an increase of over 50% from calendar year 2016 (see Figure 1 and Figure 2). The majority (93%) of the user logins originated from either the State’s Attorney’s Office or the circuit courts. Additionally, the Guidelines Calculator Tool (GLCT) was accessed 5,000 times in calendar year 2017, a slight increase from calendar year 2016.

**Figure 1. MAGS and GLCT User Logins, Calendar Years 2015 through 2017**

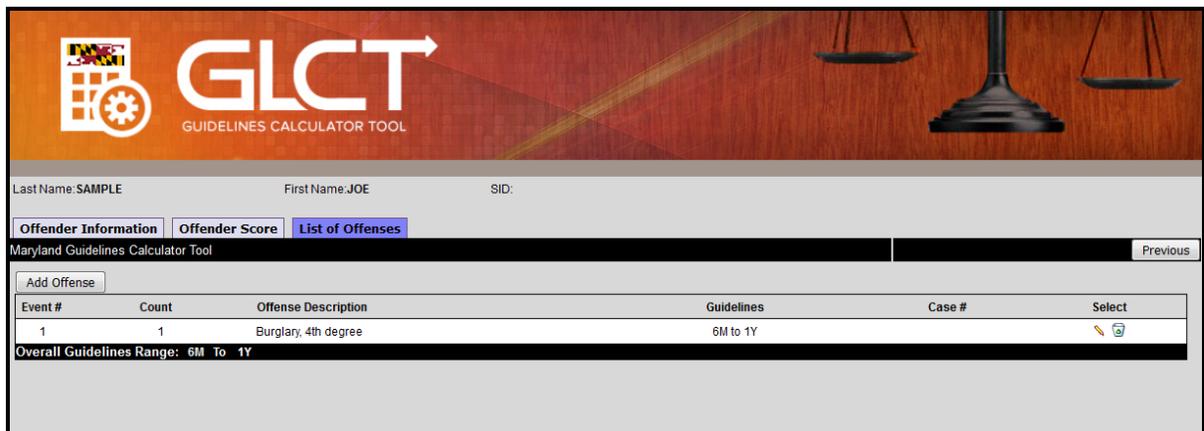


**Figure 2. MAGS User Logins, by User Type, Calendar Years 2015 through 2017**



The GLCT (see Image 2) is a stand-alone tool that anyone can use to calculate sample sentencing guidelines. The GLCT does not require login information, nor does it save or store any of the entered information. As additional jurisdictions begin using MAGS, it is expected that use of the GLCT will decrease. Figure 1 and Figure 2 indicate that users routinely use the automated guidelines calculations and worksheets provided by the GLCT. Practitioners in non-MAGS jurisdictions may use the GLCT to calculate and print sentencing guidelines worksheets for submission to the MSCCSP.

**Image 2. Guidelines Calculator Tool (GLCT)**

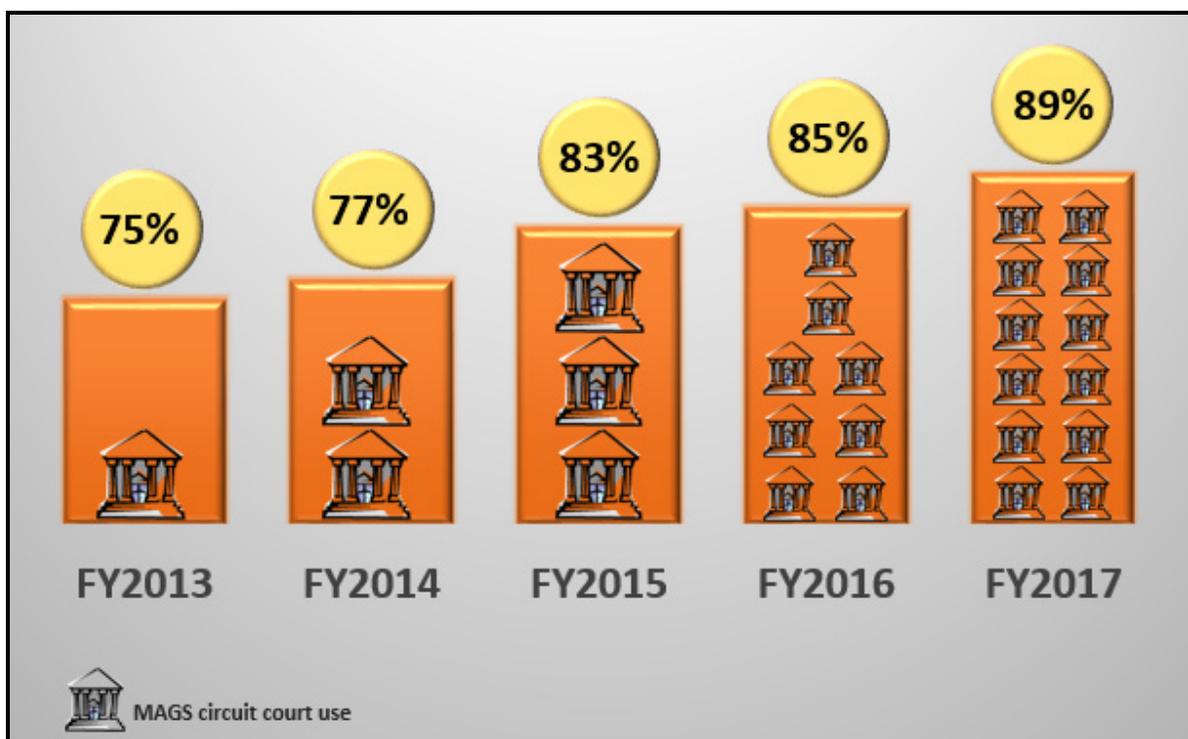


To aid in guidelines worksheet submission, in 2014 the MSCCSP staff began working with various State agencies to identify all guidelines-eligible cases sentenced in circuit courts, match these cases to guidelines worksheets received by the MSCCSP, and provide feedback regarding worksheet submission rates to individual jurisdictions, in particular those jurisdictions utilizing MAGS. Each month, the AOC sends the MSCCSP a dataset containing case-level information for all guidelines-eligible cases sentenced in circuit courts during the previous month.<sup>25</sup> The Montgomery County Circuit Court and, beginning in October 2015, the Prince George's County Circuit Court also send the MSCCSP monthly datasets containing case-level information for all guidelines-eligible cases sentenced in Montgomery and Prince George's Counties, respectively. MSCCSP staff links these datasets to data containing case-level information for all paper and MAGS guidelines worksheets received by the MSCCSP. Using this data, MSCCSP staff calculates worksheet submission rates for each jurisdiction. Jurisdictions using MAGS receive a monthly status report indicating the number of guidelines-eligible cases sentenced in their jurisdiction during the previous month, the number of worksheets submitted via MAGS, and the number of and case information for any worksheets not submitted. Since the MSCCSP began providing individual MAGS jurisdictions with feedback regarding their worksheet submission rates, the worksheet submission rate for Maryland has increased from 75% in fiscal year 2013 to 89% in fiscal year 2017 (see Figure 3). The MSCCSP anticipates that, in providing individual jurisdictions with feedback, worksheet submission rates will continue to increase thus improving the reliability and accuracy of the MSCCSP's data.

---

<sup>25</sup> For a complete description of guidelines-eligible cases, see *The Present Sentencing Guidelines* section of this report, starting at page 2.

**Figure 3. Worksheet Submission Rates, by MAGS Circuit Court Usage, Fiscal Years 2013 through 2017**



## Training and Education

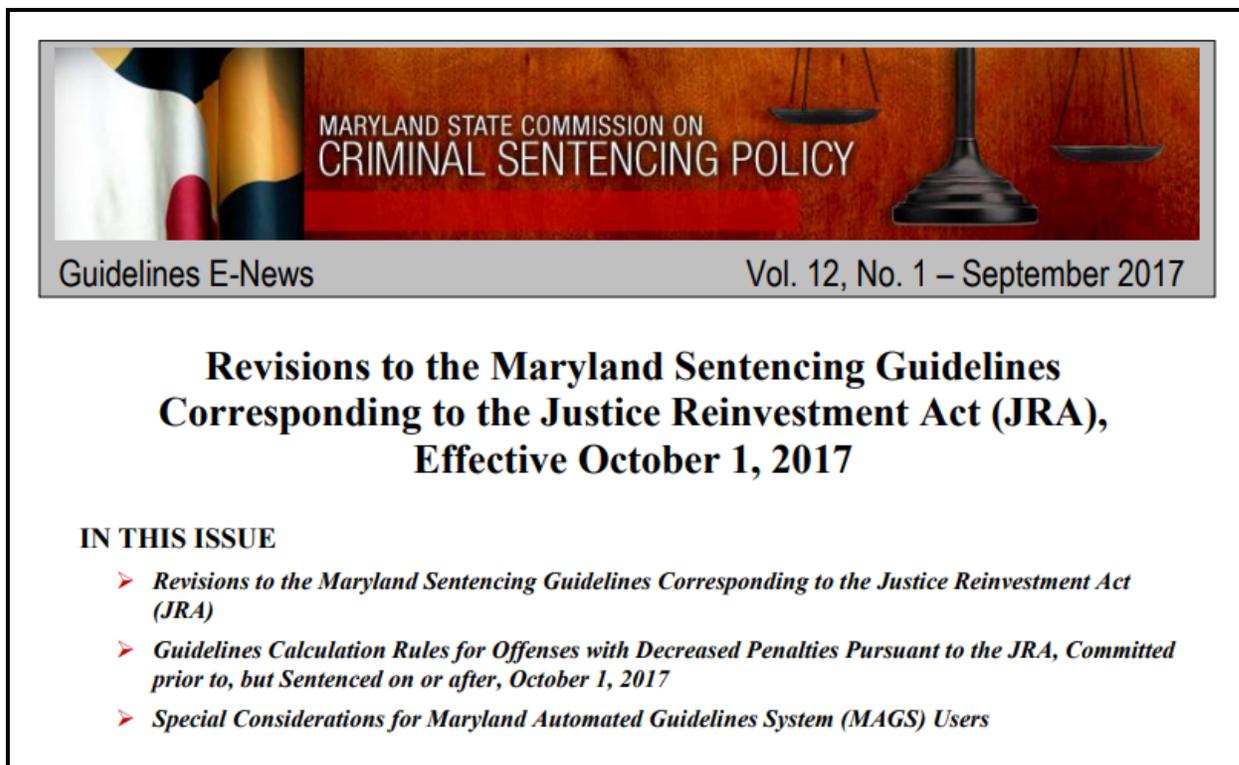
The MSCCSP provides sentencing guidelines training and MAGS orientation to promote consistent application of the guidelines and accurate completion of the sentencing guidelines worksheet. On-site guidelines trainings provide a comprehensive overview of the sentencing guidelines calculation process, instructions for completing the offender and offense scores, advice for avoiding common mistakes/omissions, several examples of more complicated sentencing guidelines scenarios, and a demonstration of the GLCT. The MSCCSP also provides on-site orientation sessions in advance of each jurisdiction's implementation of MAGS. In 2017, the MSCCSP provided 12 guidelines trainings/MAGS orientations attended by approximately 200 total participants, including circuit court judges, judicial staff, prosecutors, public defenders, Parole and Probation agents, and private defense attorneys.

This past year, the MSCCSP Executive Director, Dr. David Soulé, met with the circuit court judges in 15 of Maryland's 24 jurisdictions. The meetings provided an opportunity for the MSCCSP to review sentencing guidelines-related data with the individual jurisdictions, offer status reports on guidelines worksheet submission rates, and receive feedback from the judges on areas of interest or concern regarding the activities of the MSCCSP.

The MSCCSP also maintains a website ([www.msccsp.org](http://www.msccsp.org)) that it updates regularly to provide materials for criminal justice practitioners regarding the application of the guidelines, including text-searchable and print-friendly copies of the most recent version of the MSGM and the Guidelines Offense Table, a list of offenses with non-suspendable mandatory minimum penalties, a list of offenses that have undergone seriousness category revisions, a sample of Frequently Asked Questions, reports on sentencing guidelines compliance and average sentences, and other relevant reports. The MSCCSP website also provides minutes from prior Commission meetings and the date, location, and agenda for upcoming meetings. Finally, the MSCCSP website offers links to the MAGS homepage and the GLCT.

In addition to providing training and education programs, the MSCCSP staff is available via phone (301-403-4165) and e-mail ([msccsp@umd.edu](mailto:msccsp@umd.edu)) from 9 a.m. to 5 p.m., Monday through Friday, to provide prompt responses to any questions or concerns regarding the sentencing guidelines or the use of MAGS. The MSCCSP staff regularly responds to questions regarding the guidelines via phone and e-mail. These questions are usually from individuals responsible for completing the guidelines worksheets (i.e., Parole and Probation agents, prosecutors, defense attorneys, and law clerks). Typically, individuals request assistance in locating a specific offense and its respective seriousness category within the Guidelines Offense Table, clarification on the rules for calculating an offender's prior adult criminal record score, or guidance with accessing or navigating MAGS.

In 2017, the MSCCSP continued to deliver timely notice of guidelines-relevant information via the dissemination of the *Guidelines E-News*. The *Guidelines E-News* (see Image 3) is a periodic report delivered electronically to criminal justice practitioners throughout Maryland. The *Guidelines E-News* provides information on changes and/or additions to the guidelines and serves as an information source on sentencing policy decisions. For example, the [September 2017 issue](#) highlighted pending revisions to the Maryland sentencing guidelines corresponding to the JRA and also reviewed guidelines calculation rules for offenses with decreased penalties pursuant to the JRA, committed prior to, but sentenced on or after, October 1, 2017.

**Image 3. Guidelines E-News, Vol.12, Issue No. 1**

## **Information, Data Requests, and Outreach**

The MSCCSP strives to be a valuable resource for both our criminal justice partners and others interested in sentencing policy. To aid public understanding of the sentencing process in Maryland, the MSCCSP is available to respond to inquiries for information related to sentencing in the State's circuit courts. In 2017, the Commission responded to approximately 45 requests for data and/or specific information related to the sentencing guidelines and sentencing trends throughout the State. A variety of individuals, including legislators, circuit court judges, law clerks, prosecutors, defense attorneys, Parole and Probation agents, victims and their family members, defendants and their family members, faculty/students of law and criminal justice, government agencies, and media personnel, submit requests for information. The MSCCSP typically responds to requests for data by providing an electronic data file created from the information collected on the sentencing guidelines worksheets.

In 2017, the MSCCSP provided sentencing information and/or data to several agencies including, but not limited to, the American Civil Liberties Union of Maryland, the GOCCP, the Circuit Court for Baltimore City, the Office of the State's Attorney for Baltimore City, as well as to several attorneys representing individual clients. Additionally, the MSCCSP completes an annual topical report entitled, *Maryland Sentencing Guidelines Compliance and Average*

*Sentence for the Most Common Person, Drug, and Property Offenses*. This report summarizes sentencing guidelines compliance and average sentence for the five most common offenses in each crime category (person, drug, and property) and is available on the MSCCSP website. Appendix C provides an abbreviated version of this report.

The Commission also regularly responds to the Maryland Legislature's requests for information to help produce fiscal estimate worksheets for sentencing-related legislation. This is an annual task performed while the General Assembly is in session. In 2017, the Commission provided information for more than 80 separate bills that proposed modifications to criminal penalties or sentencing/correctional policies.

Finally, the MSCCSP conducts outreach with other criminal justice stakeholders to provide updates on the activities completed by the Commission and to exchange information, ideas, and experiences on issues related to sentencing policies, guidelines, and other criminal justice related activities. In June 2017, the MSCCSP Executive Director, Dr. David Soulé, spoke at the Maryland Judicial Conference, presenting on sentencing reform and alternatives to sentencing as they relate to the JRA's mandates to the MSCCSP. Additionally, Dr. Soulé was invited to speak about MAGS at the annual National Association of Sentencing Commissions (NASC) conference, held in August 2017. Dr. Soulé participated in a plenary session on data innovations that help support better decision-making in sentencing policy.

## **Data Collection, Oversight, and Verification**

---

The MSCCSP staff is responsible for compiling and maintaining the Maryland sentencing guidelines database, which contains data submitted on the sentencing guidelines worksheets. The MSCCSP staff reviews worksheets as they are received. The staff verifies that the worksheets are completed accurately and in an effort to reduce the likelihood of repeated mistakes, contacts individuals who prepared inaccurate worksheets to discuss detected errors. When possible, the MSCCSP staff resolves detected errors. Once reviewed, trained interns and staff enter the data into the Maryland sentencing guidelines database.

Each year, the staff spends considerable time checking and cleaning the data maintained within the Maryland sentencing guidelines database to maximize the accuracy of the data. These data verification activities typically involve: identifying cases in the database with characteristics likely to have resulted from data entry error, reviewing the sentencing guidelines worksheets for these cases, and, when necessary, making corrections to the records in the database. The MSCCSP

staff also routinely researches missing values on key variables through the Maryland Judiciary Case Search website. Finally, the MSCCSP staff regularly verifies and updates the database containing the guidelines offenses. Checking and cleaning the data on a regular basis throughout the year allow for increased confidence in the accuracy of the data and permit more reliable offense-specific analyses of the data.

## **Public Comments Hearing**

---

The MSCCSP recognizes the importance of providing a forum for the public to discuss sentencing-related issues. As such, the MSCCSP holds an annual Public Comments Hearing. The 2017 Public Comments Hearing occurred on December 11. The MSCCSP distributed a hearing invitation to key criminal justice stakeholders throughout the State, and announced the hearing on the Commission's website, the Maryland Register, the Maryland General Assembly's hearing schedule, and through a press release by the DPSCS.

During the 2017 Public Comments Hearing, three individuals testified. The Director of Juvenile Justice Policy in the Office of the Public Defender testified as to her Office's concerns with the Commission's revisions to the juvenile delinquency scoring component of the sentencing guidelines, adopted by the Commission at its September 19 meeting. A representative of the Maryland State's Attorneys Association, who also serves as the Deputy State's Attorney for Howard County, and the State's Attorney for Harford County testified in support of the continued inclusion of a juvenile delinquency component in the sentencing guidelines. Additionally, two Maryland residents testified as to their concerns with the Maryland Governor's pardon process, specifically the requirement that individuals convicted of certain non-violent offenses, including controlled dangerous substance violations, must wait 20 years from the end of their sentence to apply for a pardon. The MSCCSP values the testimony provided by members of the public, as public participation is essential to creating awareness of sentencing issues.

The minutes for the Public Comments Hearing contain a summary of the provided testimony. The minutes will be available on the MSCCSP website after the Commission reviews and approves the minutes at its next meeting, scheduled for May 8, 2018.

## SENTENCES REPORTED IN FY 2017

The MSCCSP is responsible for collecting sentencing guidelines worksheets and automating the information to monitor sentencing practice and, as warranted, adopting any changes to the sentencing guidelines matrices. From July 1983 through June 2000, the AOC compiled the sentencing guidelines worksheet data. Beginning in July 2000, the MSCCSP assumed this responsibility. Since that time, the MSCCSP has continued to update the data and check for errors. In the process, MSCCSP staff has made corrections to the database and obtained and incorporated additional sentencing guidelines worksheets, which may affect the overall totals reported in previous reports. The data and figures presented in this report reflect only guidelines-eligible cases where the MSCCSP received a sentencing guidelines worksheet.

### Sentencing Guidelines Worksheets Received

---

In fiscal year 2017, the MSCCSP received sentencing guidelines worksheets for 10,119 sentencing events.<sup>26</sup> Approximately half of the worksheets (49.8%) were submitted electronically using MAGS. The remaining 50.2% of worksheets were submitted by mail to the MSCCSP office. The second and third columns of Table 9 illustrate the number and percentage of sentencing guidelines worksheets submitted in fiscal year 2017 by judicial circuit. Image 4 identifies the individual jurisdictions in each judicial circuit. The Third Circuit (Baltimore and Harford Counties) submitted the largest number of sentencing guidelines worksheets (2,173), while the Second Circuit (Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties) submitted the fewest (551).

In fiscal year 2017, the MSCCSP staff, in combination with staff at the AOC, the Montgomery County Circuit Court, and the Prince George's County Circuit Court, identified 12,985 guidelines-eligible cases and received a paper worksheet or MAGS submission for 11,547 (88.9%) of the guidelines-eligible cases (see the section *The Present Sentencing Guidelines* of this report for a complete definition of guidelines-eligible cases).<sup>27</sup> The fourth column of Table 9 indicates the percentage of guidelines-eligible cases with a submitted worksheet in fiscal year

---

<sup>26</sup> A sentencing event will include multiple sentencing guidelines worksheets if the offender is being sentenced for more than three offenses and/or multiple criminal events. Sentencing guidelines worksheet totals throughout this report treat multiple worksheets for a single sentencing event as one worksheet.

<sup>27</sup> Whereas the majority of this section refers to worksheets or sentencing events, which may consist of several case numbers, a guidelines-eligible case is defined as one unique case number. Because case numbers, rather than sentencing events, are used to compute the number of guidelines-eligible cases, the number of guidelines-eligible cases received is greater than the total number of worksheets received in fiscal year 2017.

2017 by judicial circuit. Worksheet submission rates ranged from 81.9% to 99.7% for individual circuits. There is variability in worksheet submission rates when looking at individual jurisdictions within each circuit. In general, jurisdictions utilizing MAGS have higher submission rates. As Figure 4 illustrates, worksheet submission rates have increased each year since MAGS was implemented. The MSCCSP anticipates that worksheet submission rates will continue to increase as more jurisdictions implement MAGS.

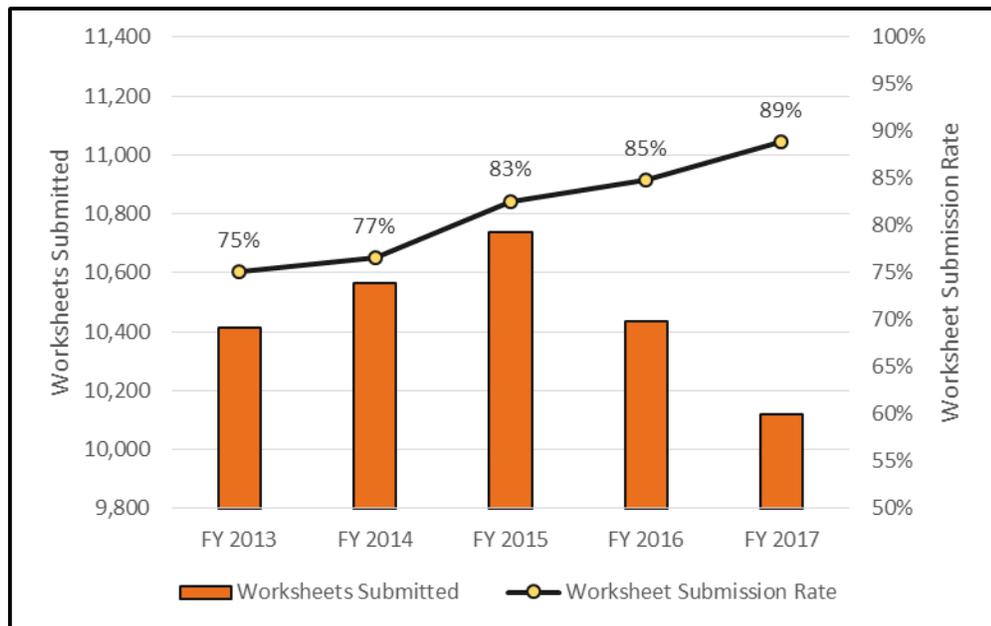
**Table 9. Number and Percentage of Sentencing Guidelines Worksheets Submitted by Circuit, Fiscal Year 2017**

<b>Circuit</b>	<b>Number of Worksheets Submitted</b>	<b>Percent of Total Worksheets Submitted<sup>28</sup></b>	<b>Percent of Guidelines-Eligible Cases with Submitted Worksheet<sup>29</sup></b>
1	714	7.1%	85.7%
2	551	5.4%	86.5%
3	2,173	21.5%	90.6%
4	598	5.9%	91.4%
5	1,257	12.4%	89.7%
6	1,320	13.0%	99.7%
7	1,572	15.5%	81.9%
8	1,934	19.1%	87.4%
<b>TOTAL</b>	<b>10,119</b>	<b>100.0%</b>	<b>88.9%</b>

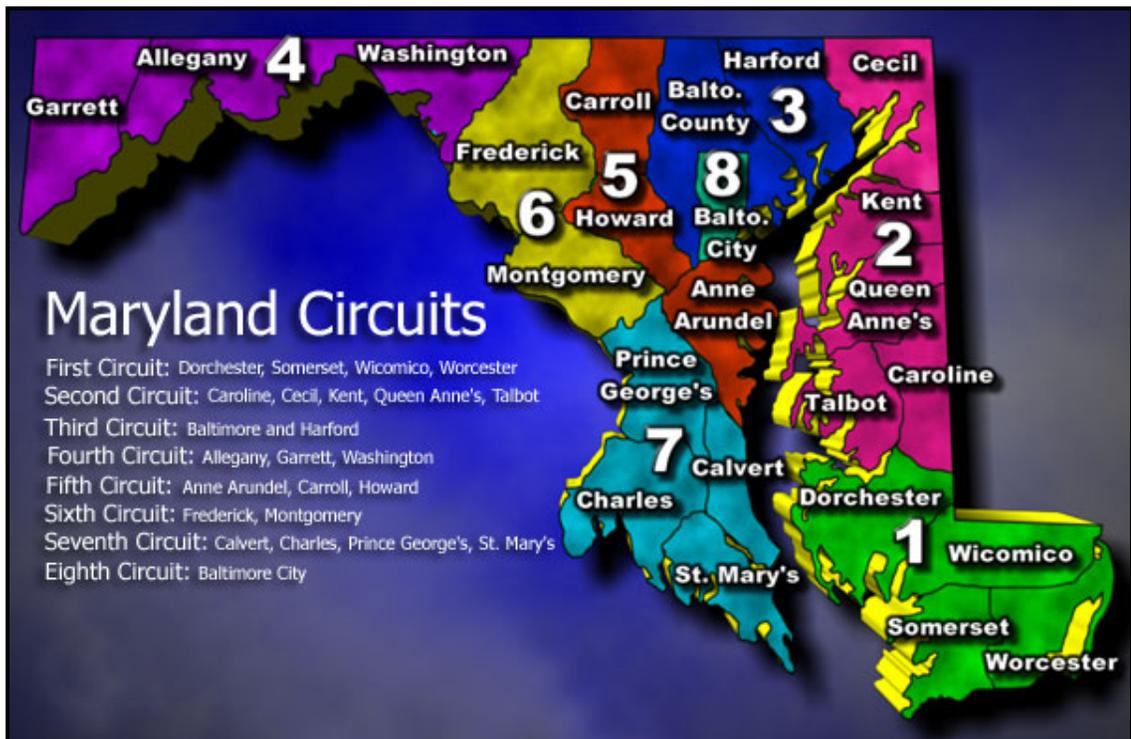
<sup>28</sup> Percentages may not total 100% due to rounding.

<sup>29</sup> The circuit courts in Montgomery and Prince George's Counties identified guidelines-eligible cases using data from their individual case management systems. The AOC identified eligible cases in Baltimore City using mainframe data. Eligible cases in all other jurisdictions were identified by the AOC using data entered into the Uniform Court System (UCS) and Maryland Electronic Courts (MDEC).

**Figure 4. Number and Percentage of Sentencing Guidelines Worksheets Submitted by Fiscal Year, Fiscal Years 2013 through 2017**



**Image 4. Maryland Judicial Circuits**

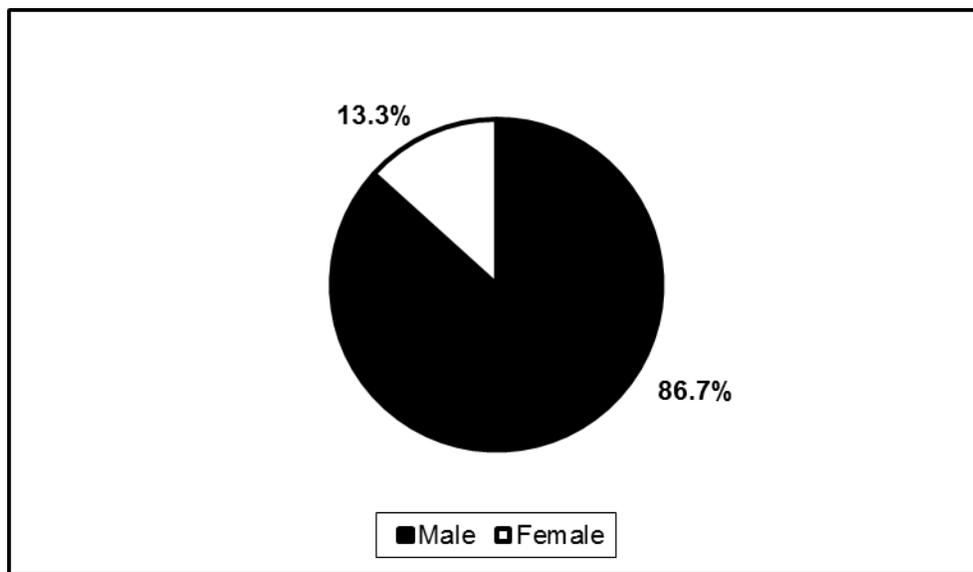


Source: <http://www.courts.state.md.us/clerks/circuitmap2.jpg> (extracted December 2010)

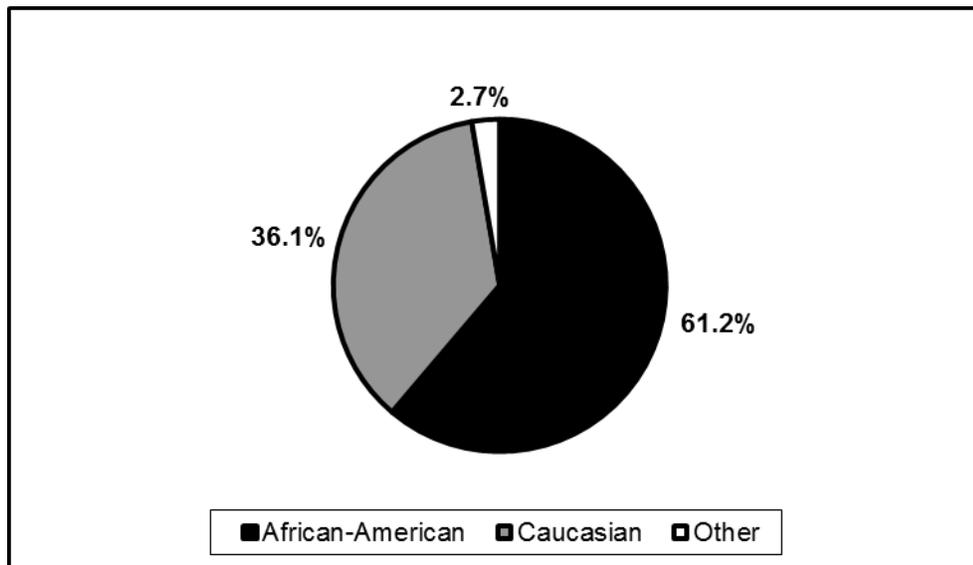
## Guidelines Case Characteristics

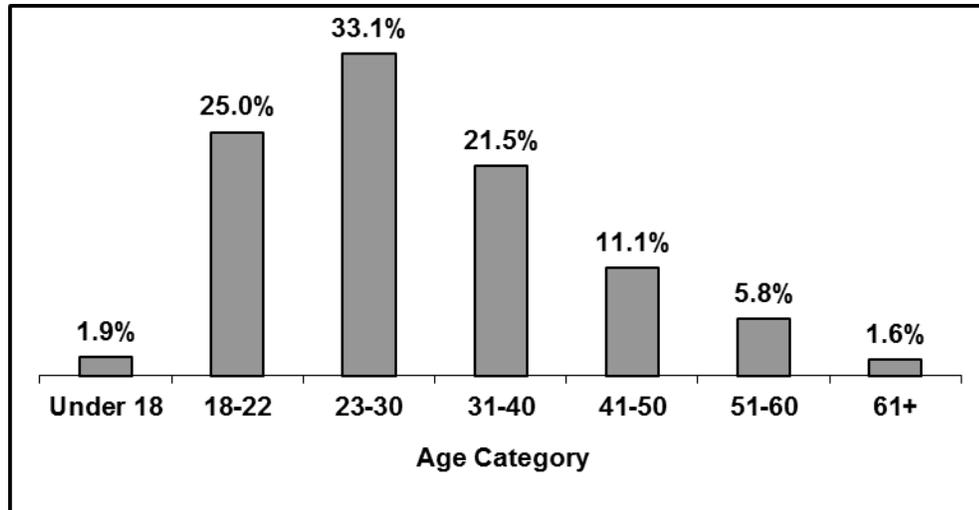
Figures 5 through 7 summarize the descriptive characteristics from the 10,119 sentencing guidelines worksheets submitted for offenders sentenced in fiscal year 2017. Most were male (86.7%) and African-American (61.2%). The median age of offenders at the date of the offense was 28 years. The youngest offender was 15, while the oldest was 85 years of age. Approximately 2% of offenders were under 18 years of age; 25% were 18-22 years old; 33% were 23-30 years old; 22% were 31-40 years old; and the remaining 18% were 41 years or older.

**Figure 5. Distribution of Guidelines Cases by Gender of Offender, Fiscal Year 2017**



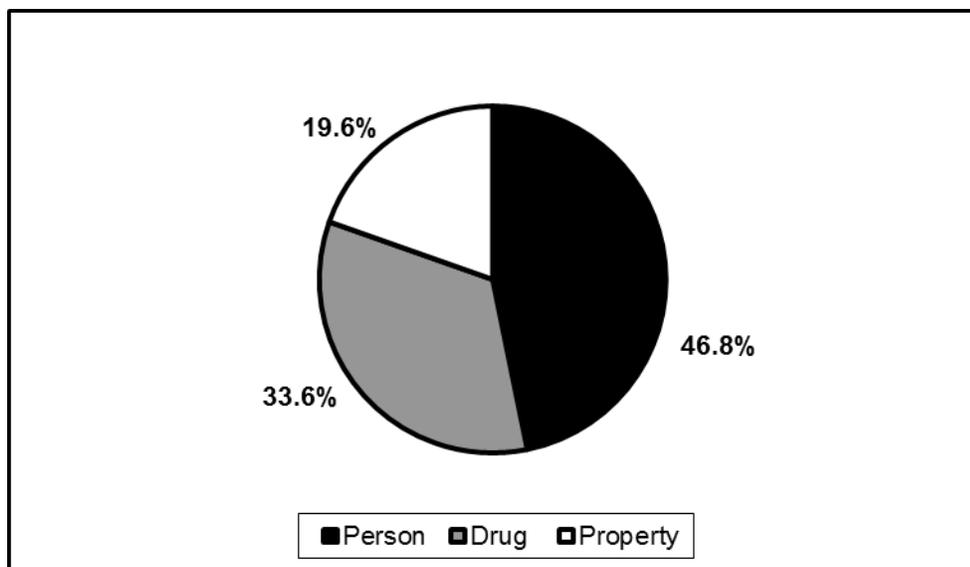
**Figure 6. Distribution of Guidelines Cases by Race of Offender, Fiscal Year 2017**



**Figure 7. Distribution of Guidelines Cases by Age of Offender, Fiscal Year 2017**

Figures 8 through 12 and Tables 10 through 11 show the distribution of cases by crime category, seriousness category, components of the offender score, components of the offense score, disposition type, and sentence type. Note that the total number of cases from which the figures and corresponding percentages derive excludes reconsiderations and three-judge panel reviews (N=43). Figure 8 provides a breakdown of cases by crime category. For cases involving multiple offenses, the figure considers only the most serious offense. Cases involving a person offense were most common (46.8%), followed by drug cases (33.6%). In 19.6% of cases, the most serious offense was a property crime. The distribution of cases by crime category was similar when limiting the analysis to defendants sentenced to incarceration (50.1% person, 30.8% drug, 19.1% property).<sup>30</sup>

<sup>30</sup> Incarceration includes home detention and credited time, as well as post-sentence jail/prison time.

**Figure 8. Distribution of Guidelines Cases by Crime Category, Fiscal Year 2017**

Figures 9a, 9b, and 9c display the distribution of cases by offense seriousness category for each of the three crime categories. In cases involving a person offense, offenses with a seriousness category V were most common (35.3%), followed by offenses with a seriousness category III (18.9%). *Second degree assault* was the most frequently occurring category V offense, and *robbery with a dangerous weapon* was the most frequently occurring category III offense.

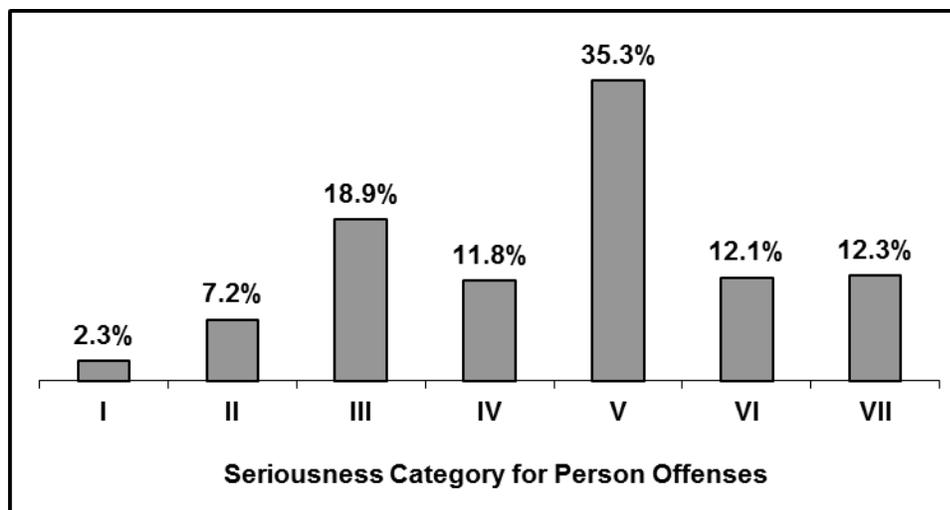
**Figure 9a. Distribution of Person Offenses by Seriousness Category, Fiscal Year 2017**

Figure 9b summarizes the distribution of drug offenses by seriousness category. Nearly three-fourths of drug cases involved an offense with either a seriousness category IIIB (49.7%) or a seriousness category IV (23.2%). *Distribution of heroin* and *distribution of cocaine* were the

most frequently occurring category IIIB offenses, while *distribution of marijuana* was the most frequently occurring category IV offense. Note that there are currently no seriousness category VI drug offenses.

**Figure 9b. Distribution of Drug Offenses by Seriousness Category, Fiscal Year 2017**

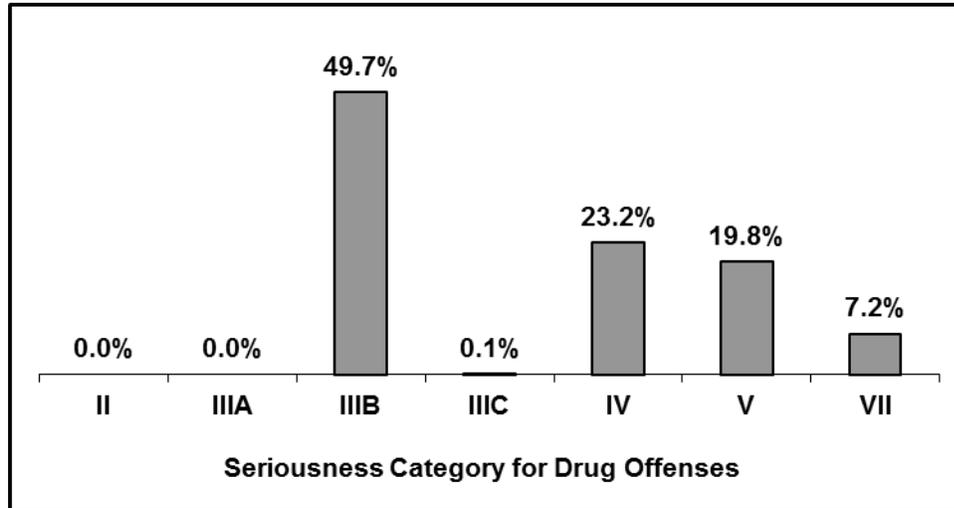


Figure 9c provides the distribution of offenses by seriousness category for property cases. Offenses with a seriousness category II (1.1%) or VI (5.6%) were far less frequent than offenses in the remaining seriousness categories. The most common property offenses included *first degree burglary* (III), *second degree burglary* (IV), *theft or theft scheme of at least \$1,000 but less than \$10,000* (V), and *theft or theft scheme of less than \$1,000 and fourth degree burglary* (VII).

**Figure 9c. Distribution of Property Offenses by Seriousness Category, Fiscal Year 2017**

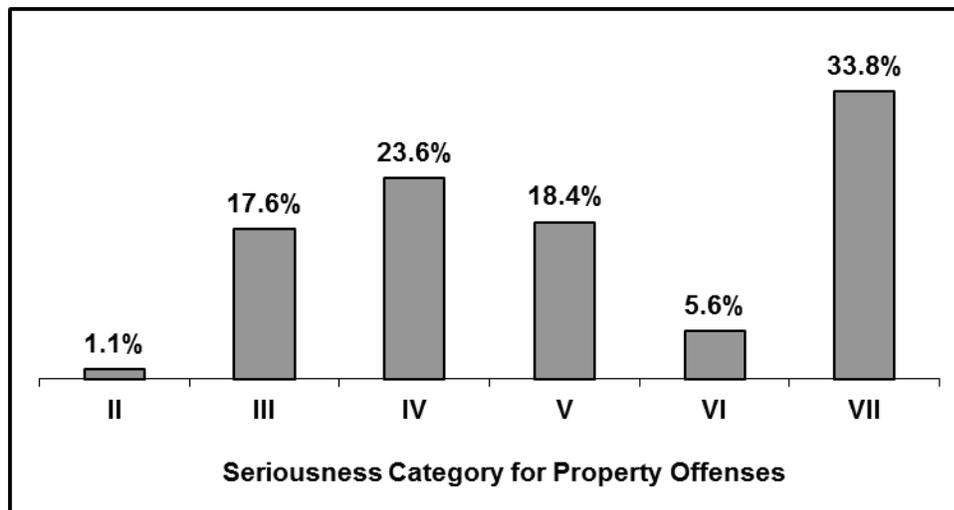


Table 10 shows the distribution of cases by the four components of the offender score. The offender score provides a measure of the defendant's prior criminal history and ranges from 0 to 9. Table 11 displays the distribution of person offenses by the four components of the offense score. The offense score provides a measure of the seriousness of an offense against a person and ranges from 1 to 15. The sentencing matrix grid cell at the intersection of an individual's offender score and offense seriousness category (for drug and property offenses) or offense score (for person offenses) determines the individual's sentence recommendation.<sup>31</sup>

**Table 10. Distribution of Guidelines Cases by Offender Score, Fiscal Year 2017**

Offender Score Component		Percent of Offenders
Relationship to CJS When Offense Occurred	0 = None or pending cases	75.3%
	1 = Court or other criminal justice supervision	24.7%
Juvenile Delinquency	0 = 23 years or older <b>or</b> crime-free for 5 years <b>or</b> no more than 1 finding of a delinquent act	94.3%
	1 = Under 23 years old <b>and</b> : 2 or more findings of a delinquent act <b>or</b> 1 commitment	3.9%
	2 = Under 23 years <b>and</b> committed 2 or more times	1.8%
Prior Adult Criminal Record <sup>32</sup>	0 = None	32.4%
	1 = Minor	24.2%
	3 = Moderate	21.2%
	5 = Major	22.2%
Prior Adult Parole/ Probation Violation	0 = No	73.7%
	1 = Yes	26.3%
<b>AVERAGE TOTAL OFFENDER SCORE = 2.57</b>		

<sup>31</sup> For a further description of offender and offense scores, see *The Present Sentencing Guidelines* section of this report, starting at page 2.

<sup>32</sup> If an offender has lived in the community for at least ten years prior to the instant offense without criminal justice system involvement resulting from an adjudication of guilt or a plea of nolo contendere, the MSGM instructs that the prior adult criminal record shall be reduced by one level: from Major to Moderate, from Moderate to Minor, or from Minor to None. This is referred to as the criminal record decay factor. While the application of the decay factor is not typically recorded on the paper worksheet, it is captured in MAGS. The MAGS data indicate that the criminal record decay factor was applied in 1.9% of electronic guidelines worksheets in fiscal year 2017.

The second column of Table 10 details the point values for each of the components of the offender score. The average offender score in fiscal year 2017 was 2.57. Approximately three-quarters of offenders had no relationship to the criminal justice system when the instant offense occurred (75.3%). Similarly, 73.7% had no prior adult parole or probation violations, and only 5.7% received points for a juvenile record. Greater variability was observed for the prior adult criminal record component of the offender score, with nearly one-third of offenders with no record and the remaining offenders divided almost equally among the minor (24.2%), moderate (21.2%), and major (22.2%) prior adult criminal record categories.

**Table 11. Distribution of Person Offenses by Offense Score, Fiscal Year 2017**

Offense Score Component		Percent of Offenders
Seriousness Category	1 = V – VII	59.5%
	3 = IV	12.0%
	5 = III	18.8%
	8 = II	7.4%
	10 = I	2.3%
Victim Injury	0 = No injury	58.7%
	1 = Injury, non-permanent	29.6%
	2 = Permanent injury or death	11.6%
Weapon Presence	0 = No weapon	42.9%
	1 = Weapon other than firearm	19.4%
	2 = Firearm or explosive	37.7%
Special Victim Vulnerability	0 = No	88.4%
	1 = Yes	11.6%
AVERAGE TOTAL OFFENSE SCORE = 4.31		

The second column of Table 11 details the point values for each of the components of the offense score for person offenses. The average offense score for person offenses in fiscal year 2017 was 4.31. More than half of all person offenses had a seriousness category of V, VI, or VII. Approximately 59% of offenses involved no injury to the victim, and 43% involved no weapon.

Finally, 12% of person offenses were committed against vulnerable victims (defined as those under 11 years old, 65 years or older, or physically or cognitively impaired).

Figure 10 shows the distribution of cases by disposition type (Appendix D contains a description of the seven major disposition types listed on the sentencing guidelines worksheet). The vast majority of cases were resolved by either an ABA plea agreement<sup>33</sup> (45.3%) or a non-ABA plea agreement (34.4%). An additional 15.4% were resolved by a plea with no agreement, and 4.9% of cases were resolved by either a bench or jury trial (.9% and 4%, respectively).

**Figure 10. Distribution of Guidelines Cases by Disposition, Fiscal Year 2017**

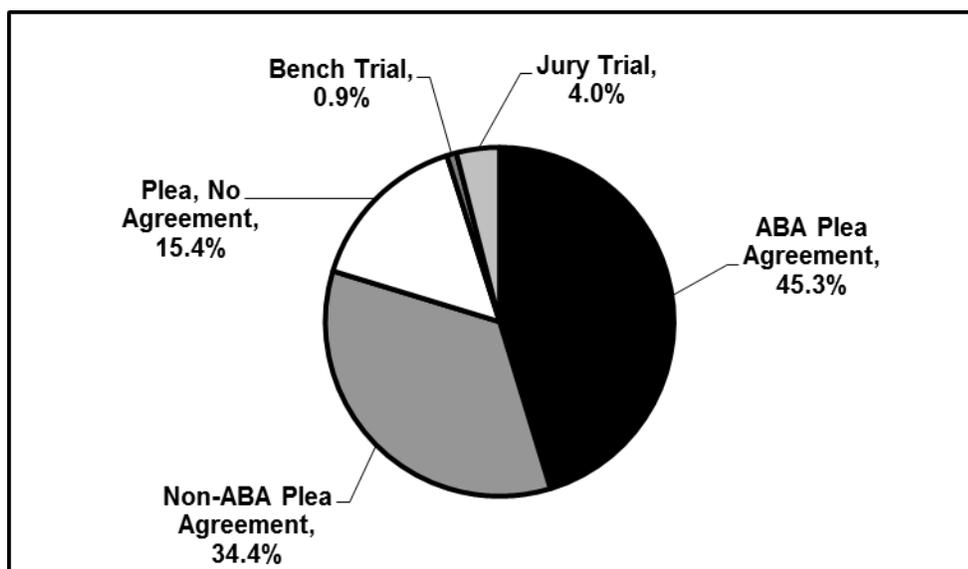
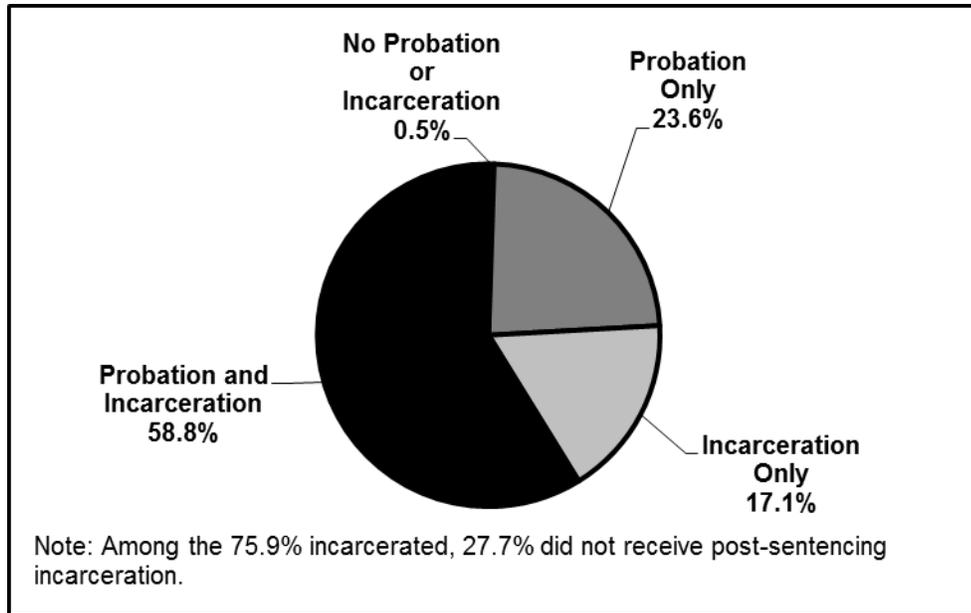


Figure 11 displays the distribution of cases by sentence type. Note that incarceration includes home detention and credited time, as well as post-sentence jail/prison time. Few offenders (.5%) received a sentence that did not include either incarceration or probation. Nearly one-quarter (23.6%) received sentences to probation only. Similarly, 17.1% of offenders received sentences to incarceration only. More than half (58.8%) of all cases resulted in a sentence to both incarceration and probation. Among those incarcerated, 27.7% did not receive post-sentencing incarceration.

<sup>33</sup> ABA plea agreements are those in which the judge, prosecutor, and defense have agreed to the binding terms of the sentence under Maryland Rule 4-243(c).

**Figure 11. Distribution of Guidelines Cases by Sentence Type, Fiscal Year 2017**

Figures 12a and 12b provide the percentage of offenders incarcerated and the average (mean and median) sentence length among those incarcerated for the past ten fiscal years (2008-2017), respectively. As in the previous figure, incarceration excludes suspended sentence time and includes jail/prison time, home detention time, and credit for time served. For offenders with multiple offenses sentenced together, the figures consider the sentence across all offenses. Figure 12a indicates that the percentage of guidelines cases sentenced to incarceration was highest in fiscal year 2008 (78.7%) and lowest in fiscal year 2015 (75%). The incarceration rate declined slightly in the past fiscal year from 76.9% to 75.9%.

**Figure 12a. Percentage of Guidelines Cases Sentenced to Incarceration by Fiscal Year**

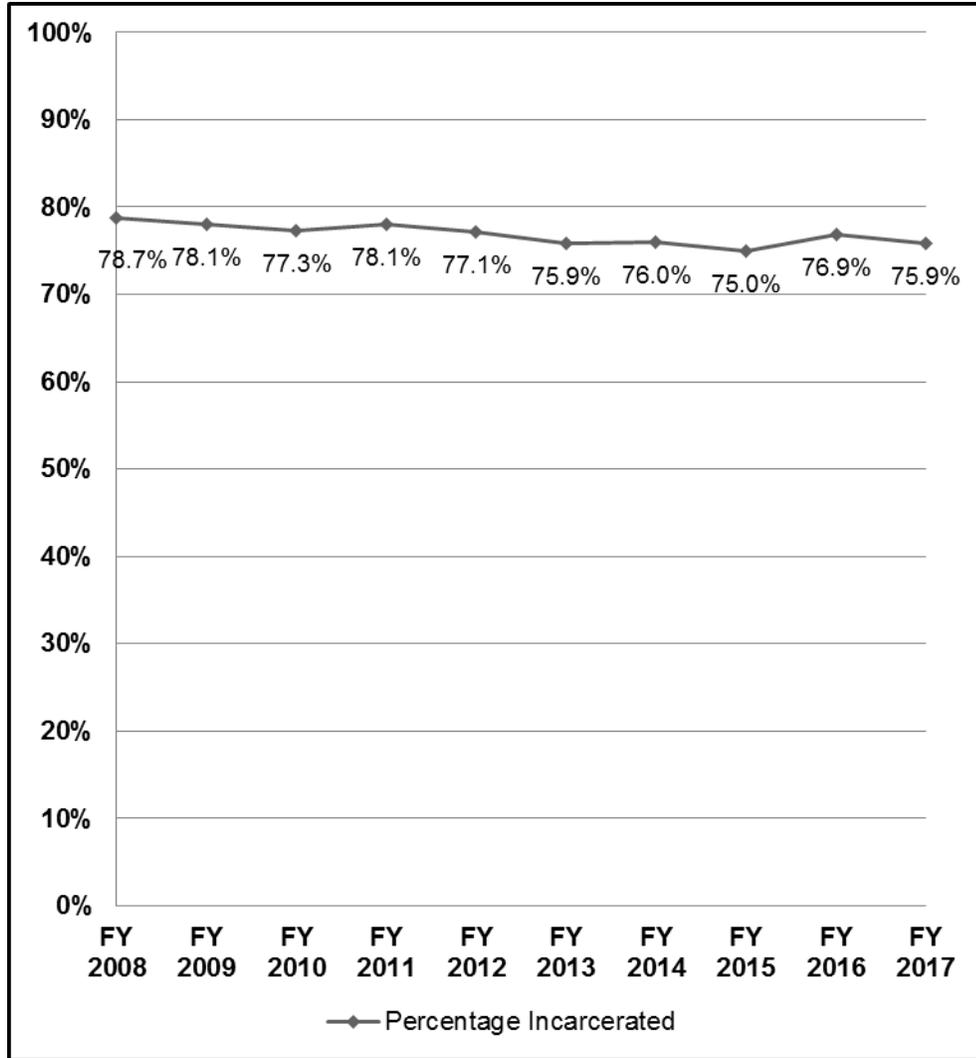
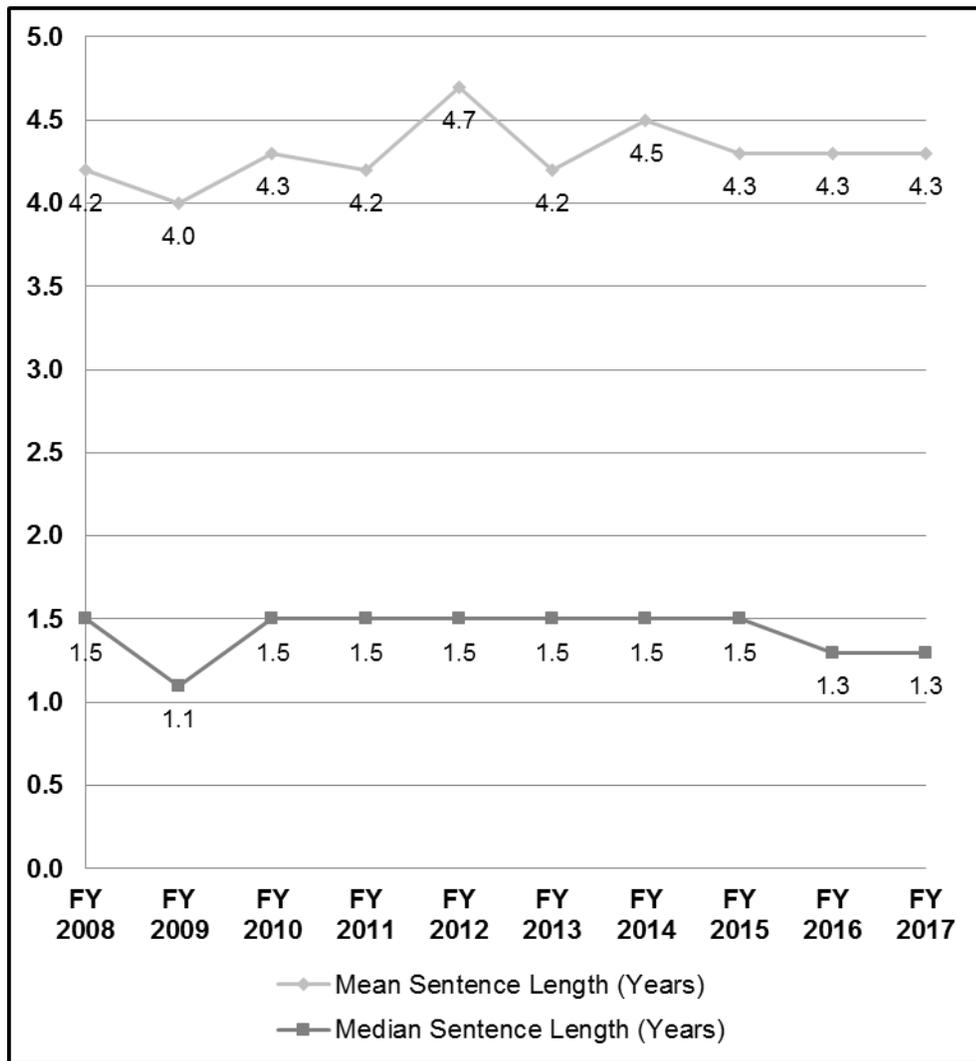


Figure 12b indicates that the typical sentence length among those incarcerated was also relatively stable during the ten-year period. The mean (average) sentence ranged from a low of 4 years in fiscal year 2009 to a high of 4.7 years in fiscal year 2012. The median (middle) sentence was 1.5 years for most of the ten-year period, except for fiscal year 2009 when the median dipped slightly to 1.1 years and more recently in fiscal years 2016 and 2017 when the median dipped to 1.3 years. The fact that the mean is larger than the median indicates that the distribution of sentences has a positive skew, with a few extremely long sentences pulling the mean above the median.

**Figure 12b. Length of Sentence for Guidelines Cases by Fiscal Year**



## JUDICIAL COMPLIANCE WITH MARYLAND'S VOLUNTARY SENTENCING GUIDELINES

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

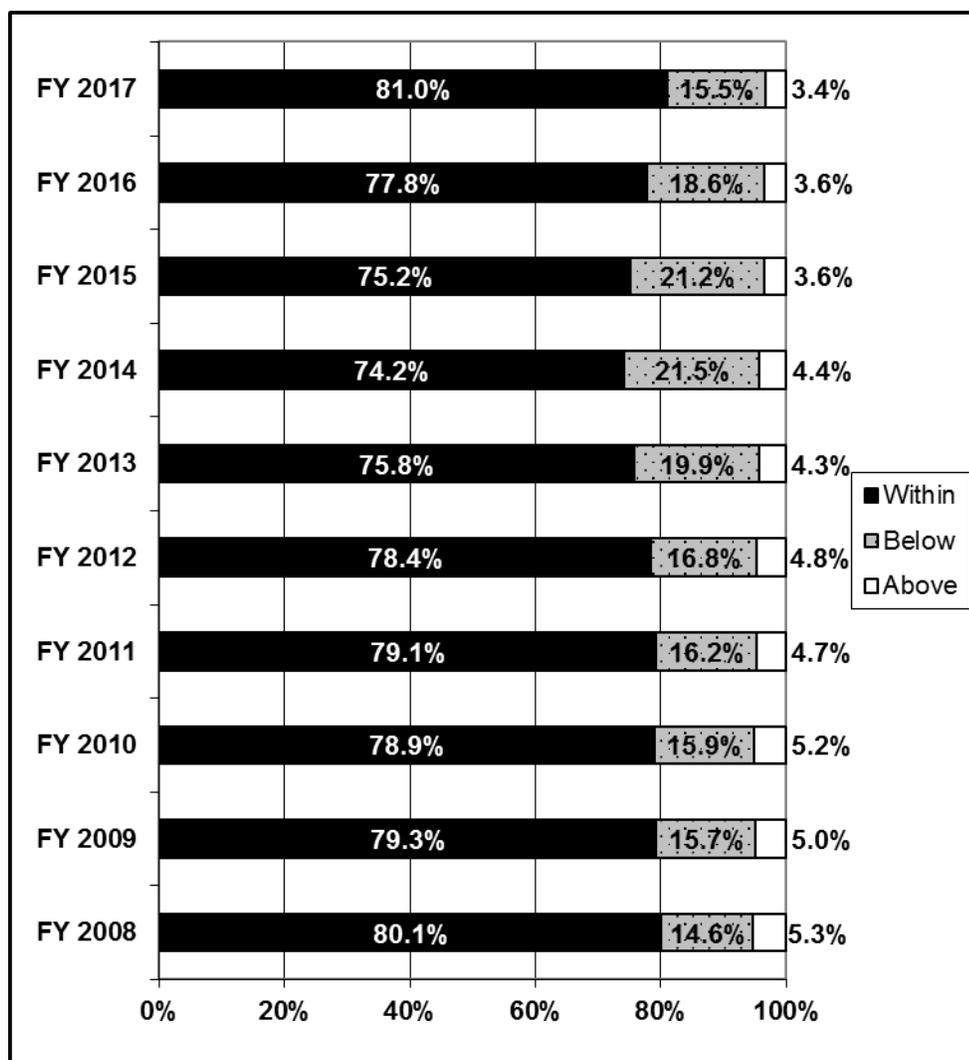
### Judicial Compliance Rates Overall

---

The MSCCSP deems a sentence compliant with the guidelines if the initial sentence (defined as the sum of incarceration, credited time, and home detention) falls within the applicable guidelines range. In addition, the MSCCSP deems a sentence compliant if the judge sentenced an offender to a period of pre-sentence incarceration time with no additional post-sentence incarceration time and the length of credited pre-sentence incarceration exceeds the upper guidelines range for the case. The MSCCSP deems sentences to *corrections options* programs (e.g., drug court; (HG), § 8-507 commitments; home detention) compliant provided that the initial sentence plus any suspended sentence falls within or above the applicable guidelines range and the case does not include a crime of violence, child sexual abuse, or escape. By doing so, the Commission recognizes the state's interest in promoting these alternatives to incarceration. Finally, sentences pursuant to an ABA plea agreement are guidelines-compliant (COMAR 14.22.01.17). The MSCCSP adopted the ABA plea agreement compliance policy in July 2001 to acknowledge that ABA plea agreements reflect the consensus of the local view of an appropriate sentence within each specific community. The *corrections options* and ABA plea agreement compliance policies allow the court to set a "guidelines compliant" sentence which considers the individual needs of the offender, such as substance abuse treatment, as opposed to incarceration.

Figure 13 illustrates the overall guidelines compliance rates for the past ten fiscal years (2008-2017). The figure indicates that in all ten years, the overall rate of compliance exceeded the Commission's benchmark standard of 65% compliance. The aggregate compliance rate has remained fairly stable during the past decade, ranging from a low of 74.2% in fiscal year 2014 to a high of 81% in the most recent reporting period (fiscal year 2017).

**Figure 13. Overall Sentencing Guidelines Compliance by Fiscal Year  
(All Cases)**

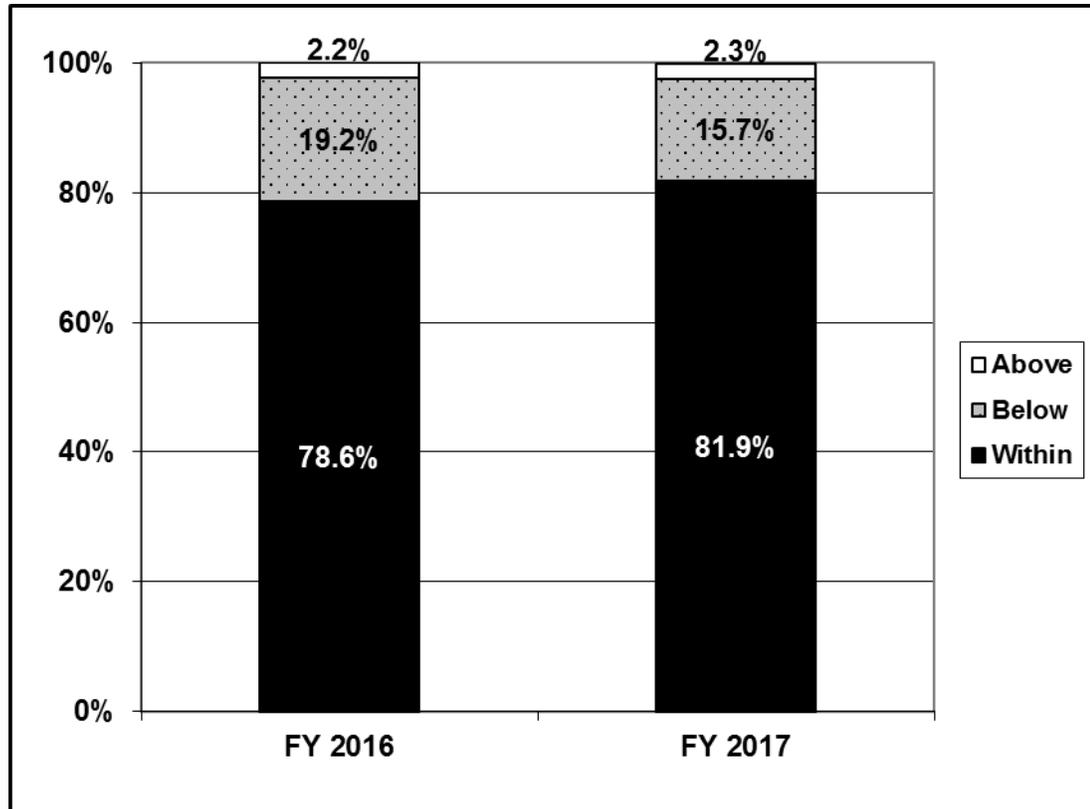


Analyses of judicial compliance in Maryland traditionally focus on sentences for single-count convictions because they permit the most direct comparison of compliance by crime category and by offense type within the applicable cell of the sentencing matrix. Since multiple-count convictions can consist of any combination of person, drug, and property offenses, meaningful interpretations of sentencing patterns within matrices are not possible. Thus, the figures from this point forward focus on sentences for single-count convictions during fiscal years 2016 and 2017. Of the 10,119 sentencing guidelines worksheets submitted to the MSCCSP in fiscal year 2017, 7,650 (75.6%) pertained to single-count convictions.

Figure 14 provides the overall guidelines compliance rates for fiscal years 2016 and 2017 based on single-count convictions. The rates are similar to those in Figure 13. In both years, the overall rate of compliance exceeded the Commission's goal of 65% compliance. More than

three-quarters of cases were compliant in both fiscal years. When departures occurred, they were more often below the guidelines than above.

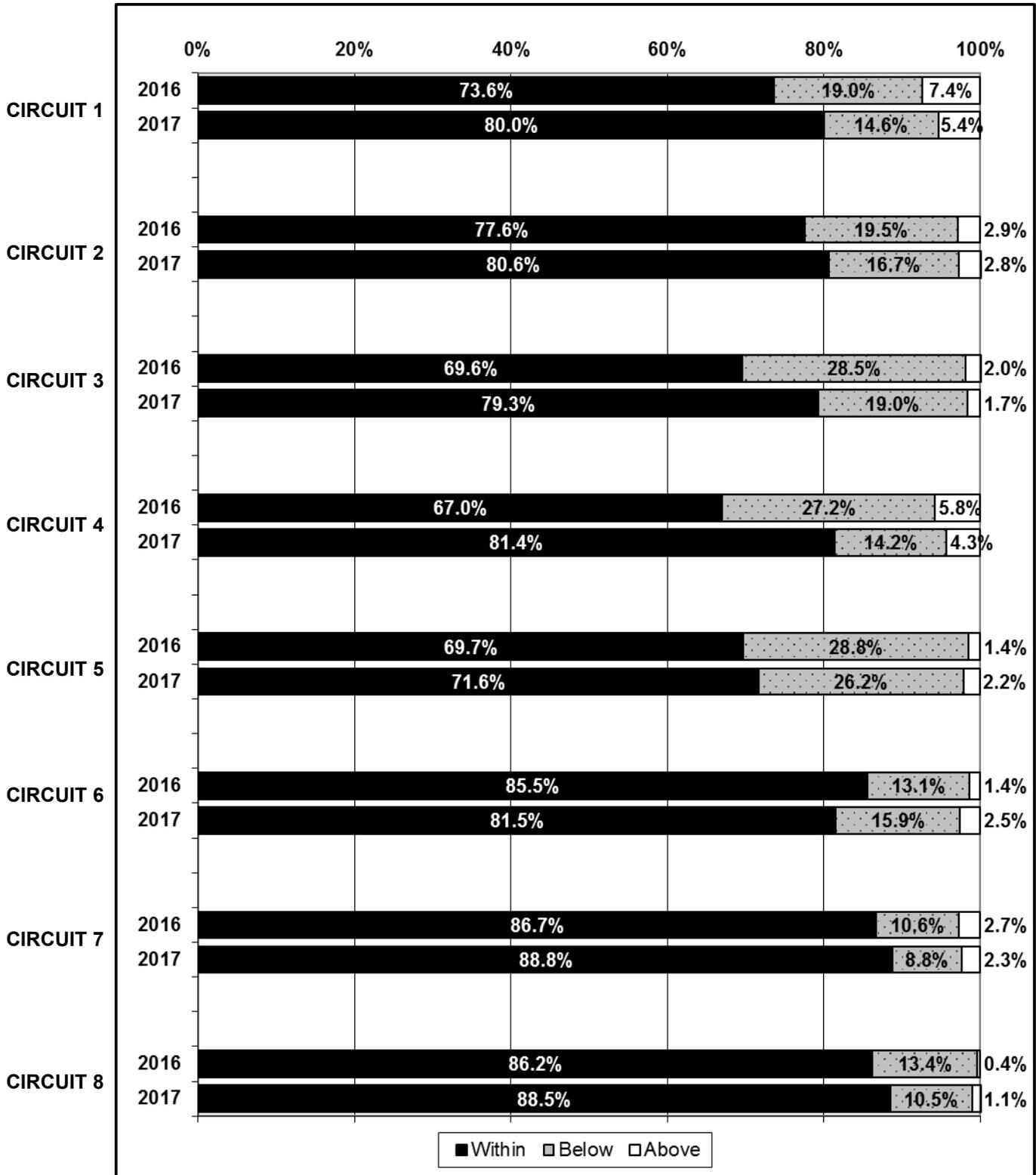
**Figure 14. Overall Sentencing Guidelines Compliance by Fiscal Year (Single-Count Convictions)**



### Judicial Compliance Rates by Circuit

As shown in Figure 15, all eight trial court judicial circuits met the 65% compliance benchmark in fiscal year 2017. The Seventh Circuit had the highest compliance rate (88.8%), followed closely by the Eighth Circuit (88.5%). In contrast, compliance was lowest in the Fifth Circuit (71.6%). The largest change in the compliance rate occurred in the Fourth Circuit, where the rate increased 14.4 percentage points from 67% in fiscal year 2016 to 81.4% in fiscal year 2017. The Third Circuit observed a notable increase in the compliance rate as well, from 69.6% in fiscal year 2016 to 79.3% in fiscal year 2017. These increases can largely be attributed to an increase in the reported use of ABA pleas during the same period of time in both circuits.

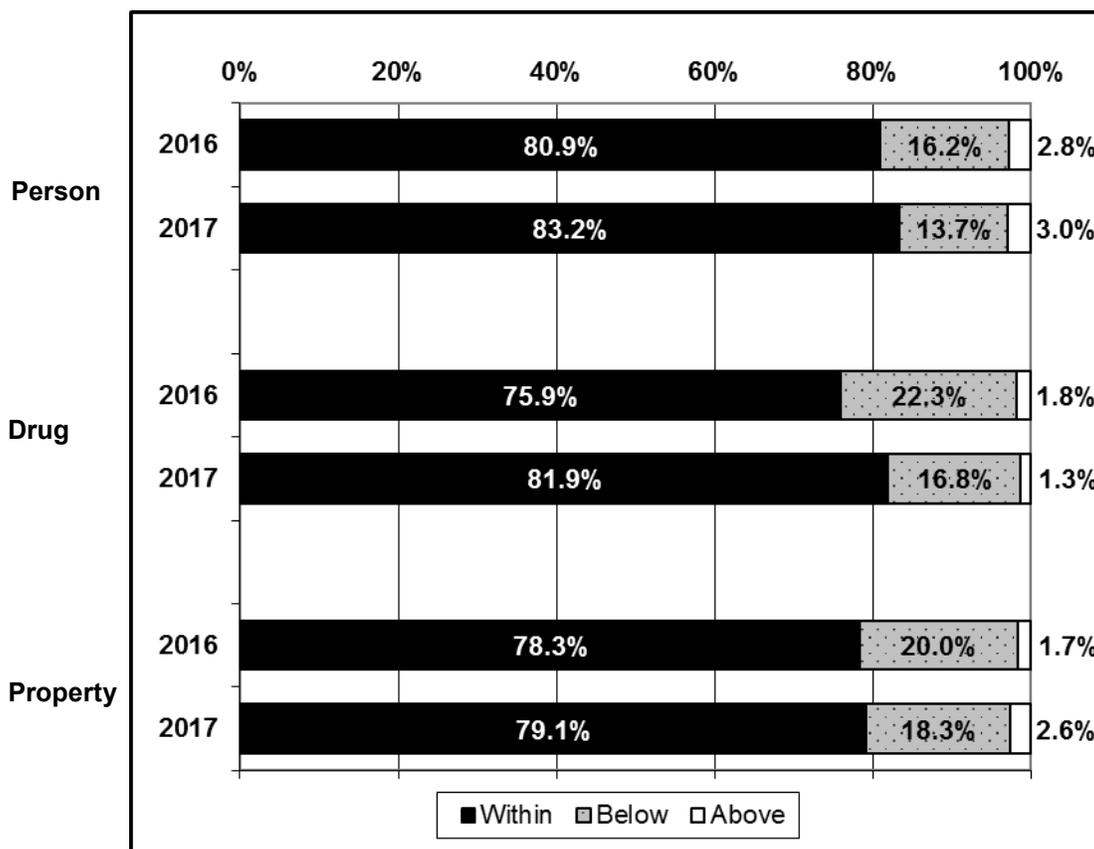
**Figure 15. Sentencing Guidelines Compliance by Circuit and Fiscal Year**



## Judicial Compliance Rates by Crime Category

Figure 16 shows judicial compliance by crime category for fiscal years 2016 and 2017. Person offenses were the least likely to result in a departure from the guidelines in fiscal year 2017, although differences in compliance rates from one crime category to the next were small. The compliance rates for all three crime categories increased from fiscal year 2016 to fiscal year 2017, and the 65% benchmark was met for all three crime categories in both fiscal years.<sup>34</sup> The largest increase was observed for drug offenses, where the rate increased 6 percentage points from 75.9% in fiscal year 2016 to 81.9% in fiscal year 2017. This increase in compliance can largely be attributed to an increase in the reported use of ABA pleas coupled with the revisions to rows V and IV of the sentencing matrix for drug offenses, effective July 1, 2016, that adjusted ranges to reflect the current sentencing practices of judges.

**Figure 16. Sentencing Guidelines Compliance by Crime Category and Fiscal Year**

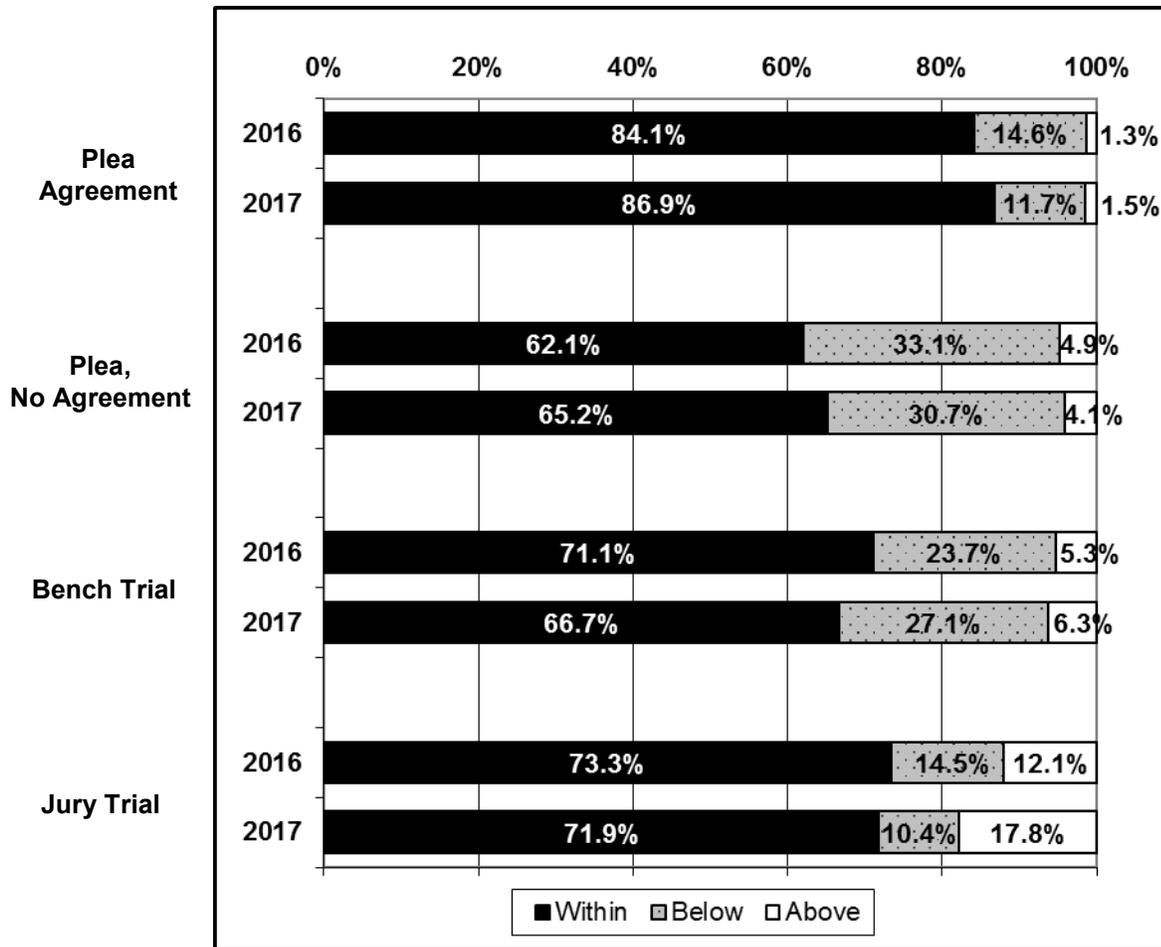


<sup>34</sup> See Appendix C for sentencing guidelines compliance and average sentence for the five most common offenses in each crime category.

## Judicial Compliance Rates by Type of Disposition

Figure 17 examines the extent to which judicial compliance rates varied by type of disposition (i.e., plea agreement, plea with no agreement, bench trial, and jury trial). Plea agreements accounted for the highest percentage of compliant cases (86.9%) in fiscal year 2017. This is not surprising given that the plea agreement category includes ABA plea agreements, which are compliant by definition. In contrast, cases resolved by a plea with no agreement had the lowest compliance rate (65.2%). Cases resolved by a plea with no agreement also saw the largest percentage of downward departures (30.7%). Finally, jury trials were the only disposition type where upward departures occurred more often than downward departures in fiscal year 2017.

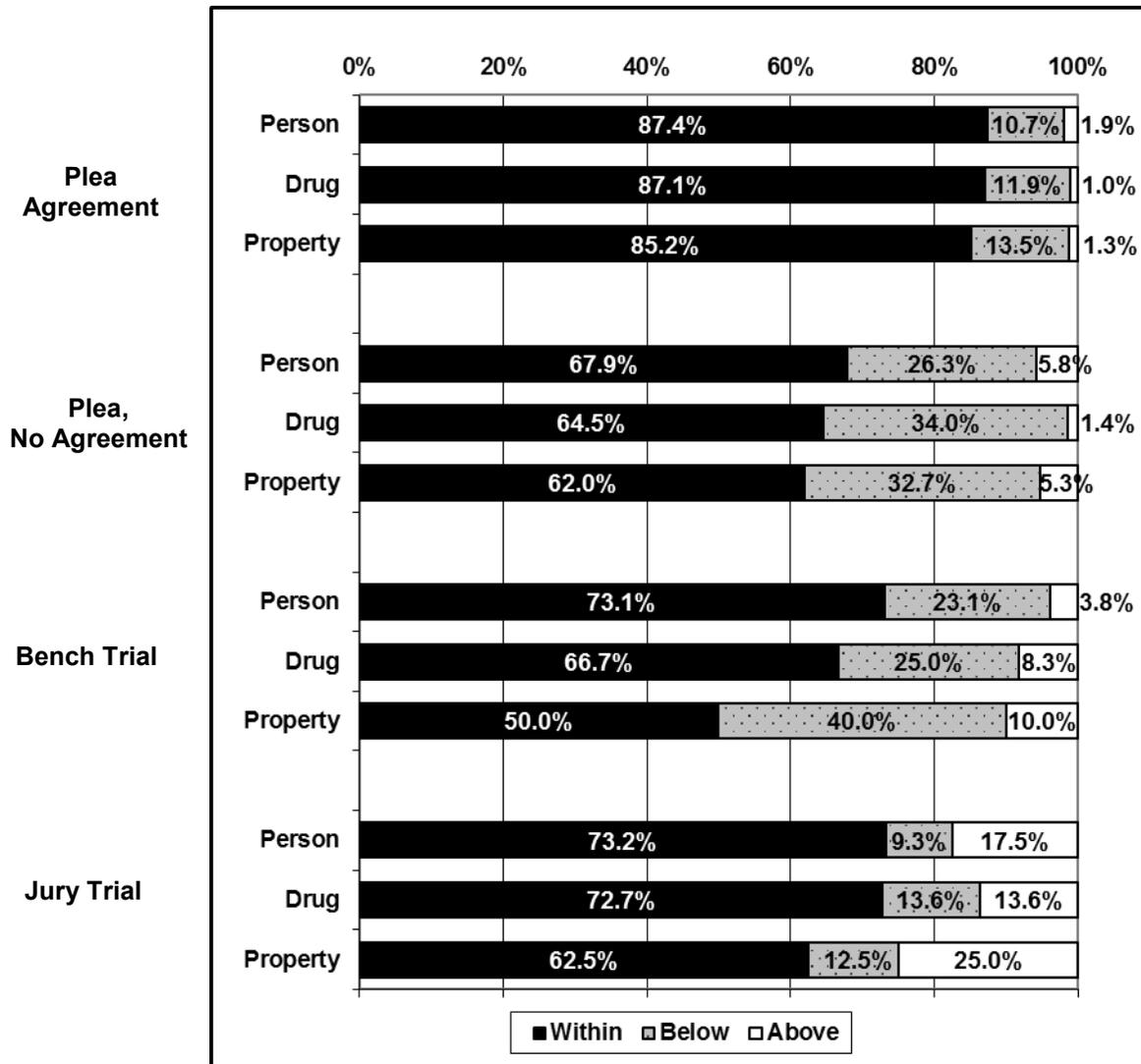
**Figure 17. Sentencing Guidelines Compliance by Type of Disposition and Fiscal Year**



## Judicial Compliance Rates by Crime Category and Disposition

Figure 18 displays compliance rates by crime category and disposition for fiscal year 2017. Some of the rates are based on a very small number of cases. For example, the MSCCSP received only 10 worksheets in fiscal year 2017 for single-count property offenses adjudicated by a bench trial. Small numbers sharply limit the ability to provide meaningful interpretation.

**Figure 18. Sentencing Guidelines Compliance by Crime Category and Disposition, Fiscal Year 2017**



The highest compliance rates were observed for person, drug, and property offenses adjudicated by a plea agreement (87.4%, 87.1%, and 85.2%, respectively). Four of the twelve compliance rates fell short of the benchmark of 65%: drug offenses resolved by a plea with no agreement (64.5%) and property offenses resolved by a plea with no agreement, bench trial,

and jury trial (62%, 50%, and 62.5%, respectively).<sup>35</sup> Upward departures were most common among property offenses disposed of by a jury trial (25%), while downward departures occurred most often among property offenses disposed of by a bench trial (40%).

## Departure Reasons

---

COMAR 14.22.01.05A directs the sentencing judge to document the reason or reasons for imposing a sentence outside of the recommended guidelines range on the sentencing guidelines worksheet. To facilitate the reporting of mitigating and aggravating departure reasons on the sentencing guidelines worksheet, the MSCCSP provides judges with a reference card listing the more common departure reasons and including the accompanying numerical departure code (Appendix E contains a list of these departure reasons). The worksheet allows for up to three departure codes and provides a space for the judge to write in other reasons not contained on the reference card.

Efforts to facilitate the reporting of reasons for departing from the guidelines have helped to address the underreporting of departure reasons. In fiscal year 2017, the reason for departure was provided in 63% of all departure cases. This represents a notable increase in reporting from fiscal year 2016 (46.4%). The MSCCSP staff will continue to emphasize the need to include a reason for departure when providing training sessions. Additionally, the continued deployment of MAGS to new jurisdictions will help facilitate the collection of departure reasons, as the departure reason is a required field necessitating completion prior to the electronic submission of any sentence identified as a departure from the guidelines. It is important for judges to provide the reason for departure, since those reasons will likely inform the Commission's consideration of potential guidelines revisions.

Tables 12 and 13 display the reasons given for departures from the guidelines in fiscal year 2017. The tables include all of the reasons listed on the reference card as well as the most commonly cited "other" reasons. Table 12 provides a rank order of the mitigating reasons judges provided for cases where the sentence resulted in a downward departure. The first row of the table shows that in 37.8% of downward departures, the reason for departure was missing. The most commonly cited reasons for downward departures were: 1) the parties reached a plea agreement that called for a reduced sentence; 2) recommendation of the State's Attorney or

---

<sup>35</sup> Compliance rates were rounded to the nearest whole number to determine whether the 65% benchmark was met.

Division of Parole and Probation; and 3) offender's commitment to substance abuse treatment or other therapeutic program.

**Table 12. Departure Reasons for Cases Below the Guidelines, Fiscal Year 2017<sup>36</sup>**

<b>Mitigating Reasons</b>	<b>Percent of Departures Where Reason is Cited</b>	<b>Valid Percent<sup>37</sup></b>
<i>No Departure Reason Given</i>	37.8%	---
The parties reached a plea agreement that called for a reduced sentence	27.6%	44.4%
Recommendation of State's Attorney or Division of Parole and Probation	18.8%	30.3%
Offender's commitment to substance abuse treatment or other therapeutic program	9.7%	15.7%
Offender made restorative efforts after the offense	3.0%	4.8%
Offender's age/health	2.2%	3.6%
Offender's minor role in the offense	1.9%	3.1%
Offender's prior criminal record not significant	1.7%	2.8%
Victim's participation in the offense lessens the offender's culpability	1.7%	2.8%
Offender had diminished capability for judgment	1.3%	2.1%
Offender was influenced by coercion or duress	0.1%	0.1%
Other reason (not specified above)	10.0%	16.1%

<sup>36</sup> Each case may cite multiple reasons.

<sup>37</sup> Valid percent based on the number of cases below the guidelines with reason cited.

Table 13 provides a rank order of the aggravating reasons judges provided for cases where the sentence resulted in an upward departure. The first row of the table shows that in 31.3% of upward departures, the reason for departure was not provided. The most commonly cited reasons for departures above the guidelines were: 1) recommendation of the State's Attorney or Division of Parole and Probation; 2) the vicious or heinous nature of the conduct; and 3) special circumstances of the victim.

**Table 13. Departure Reasons for Cases Above the Guidelines, Fiscal Year 2017<sup>38</sup>**

<b>Aggravating Reasons</b>	<b>Percent of Departures Where Reason is Cited</b>	<b>Valid Percent<sup>39</sup></b>
<i>No Departure Reason Given</i>	31.3%	---
Recommendation of State's Attorney or Division of Parole and Probation	31.3%	45.5%
The vicious or heinous nature of the conduct	15.3%	22.3%
Special circumstances of the victim	13.6%	19.8%
Offender's major role in the offense	10.8%	15.7%
Offender exploited a position of trust	10.2%	14.9%
The level of harm was excessive	9.1%	13.2%
Offender's significant participation in major controlled substance offense	3.4%	5.0%
The parties reached a plea agreement	2.3%	3.3%
Offender's prior criminal record significant	1.7%	2.5%
Offender committed a "white collar" offense	0.6%	0.8%
Other reason (not specified above)	10.8%	15.7%

<sup>38</sup> Each case may cite multiple reasons.

<sup>39</sup> Valid percent based on the number of cases above the guidelines with reason cited.

## ADDITIONAL INFORMATION COLLECTED

### Report on Adjustments from Reconsidered Sentences Involving Crimes of Violence

---

CP, § 6-209 requires the MSCCSP's annual report to review reductions or increases in original sentences that have occurred because of reconsiderations of sentences<sup>40</sup> imposed under § 14-101 of the Criminal Law Article and categorize information on the number of reconsiderations of sentences by crimes as listed in § 14-101 of the Criminal Law Article and by judicial circuit. Table 14 reviews reconsidered sentences reported to the MSCCSP for crimes of violence as defined in CR, § 14-101 for fiscal year 2017 by judicial circuit. Reconsidered sentences were reported for thirty-three offenders and seventy offenses. Robbery with a dangerous weapon (CR, § 3-403) was the most common violent offense in reconsidered cases reported to the MSCCSP in fiscal year 2017.

---

<sup>40</sup> Maryland Rule 4-345(e) indicates that upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

**Table 14. Reconsiderations for Crimes of Violence (CR, § 14-101), Fiscal Year 2017<sup>41</sup>**

<b>Circuit</b>	<b>Offense</b>	<b>N</b>
FIRST	Robbery	1
SECOND	Assault, 1 <sup>st</sup> Degree	1
THIRD	Assault, 1 <sup>st</sup> Degree	2
	Firearm Use in Felony or Crime of Violence	5
	Murder, 1 <sup>st</sup> Degree	2
	Robbery	2
	Robbery with Dangerous Weapon	8
FOURTH	Assault, 1 <sup>st</sup> Degree	1
SIXTH	Assault, 1 <sup>st</sup> Degree	11
	Firearm Use in Felony or Crime of Violence	10
	Home Invasion	1
	Murder, 2 <sup>nd</sup> Degree	1
	Murder, 2 <sup>nd</sup> Degree, Attempted	2
	Rape, 2 <sup>nd</sup> Degree	1
	Robbery	3
	Robbery with Dangerous Weapon	12
SEVENTH	Assault, 1 <sup>st</sup> Degree	1
	Firearm Use in Felony or Crime of Violence	1
	Kidnapping	1
	Robbery	3
	Robbery with Dangerous Weapon	1

## **Economic Loss in Title 7 and Title 8 Crimes**

CP, § 6-214 directs the MSCCSP to include an entry location on the sentencing guidelines worksheet to allow for the reporting of the specific dollar amount, when available, of the economic loss to the victim for crimes involving theft and related crimes under Title 7 of the Criminal Law Article and fraud and related crimes under Title 8 of the Criminal Law Article.<sup>42</sup> In fiscal year 2017, sentencing guidelines worksheets reported 1,262 sentences for theft, fraud, and related crimes. Only 659 (52.2%) of these cases recorded the amount of economic loss to the victim. Statewide deployment of MAGS will help facilitate the collection of this information,

<sup>41</sup> Table 14 identifies reconsidered sentences for 33 offenders and 70 offenses. The number of reported reconsidered sentences for crimes of violence in fiscal year 2017 is larger than the numbers reported in previous years. This increase should be interpreted with caution, as it likely reflects improved reporting practices related to the MAGS monthly feedback reports, rather than representing an increase in the number of reconsidered sentences for crimes of violence.

<sup>42</sup> The MSCCSP adopted the following definition of economic loss: the amount of restitution ordered by a circuit court judge or, if not ordered, the full amount of restitution that could have been ordered (COMAR 14.22.01.02B(6-1)).

as the automated system prompts the user to provide the amount of economic loss to the victim for any sentencing event involving a theft- or fraud-related crime. When reported, economic loss ranged in value from a minimum of no loss to a maximum of \$600,000. The mean (average) amount of loss was \$19,275, while the median (middle) amount of loss was \$1,319. The fact that the mean is larger than the median indicates that the distribution of economic loss has a positive skew, with a few extremely large loss amounts pulling the mean above the median. Finally, the majority of cases in which the amount of economic loss was reported on the sentencing guidelines worksheet involved a conviction for *felony theft or theft scheme, at least \$10,000 but less than \$100,000; felony theft or theft scheme, at least \$1,000 but less than \$10,000; or misdemeanor theft or theft scheme, less than \$1,000* (CR, § 7-104).

## Victim Information

---

The sentencing guidelines worksheet contains several victim-related items designed to capture the rights of victims at sentencing and whether victim-related court costs were imposed pursuant to Courts and Judicial Proceedings Article (CJ), § 7-409, Annotated Code of Maryland, and Maryland Rule 4-353. Figures 19 through 21 detail the responses to these items in fiscal year 2017. Unfortunately, the victim-related items are often left blank on the worksheet. For example, whether victim-related court costs were imposed was left blank on 58.2% of worksheets, and approximately half of all worksheets were missing information on whether there was a victim. The figures presented here are limited to the subset of cases with valid victim-related data.

Figure 19 indicates that victim-related court costs were imposed in 27.4% of cases. These court costs may be imposed for all crime types, not just those involving a direct victim. The costs outlined in CJ, § 7-409 include a \$45 Circuit Court fee that is divided among the State Victims of Crime Fund, the Victim and Witness Protection and Relocation Fund, and the Criminal Injuries Compensation Fund.

**Figure 19. Distribution of Guidelines Cases by Whether Victim-Related Court Costs Imposed, Fiscal Year 2017**

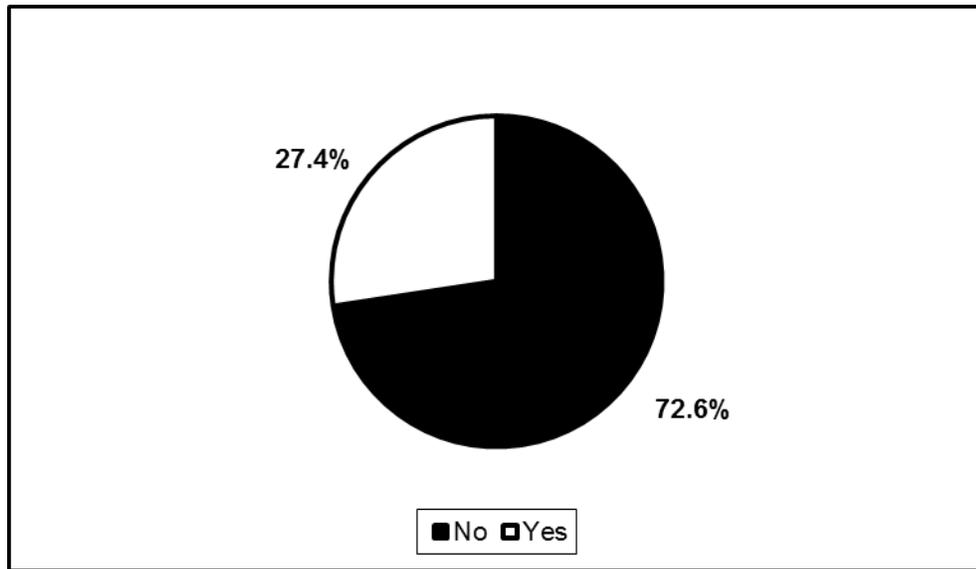
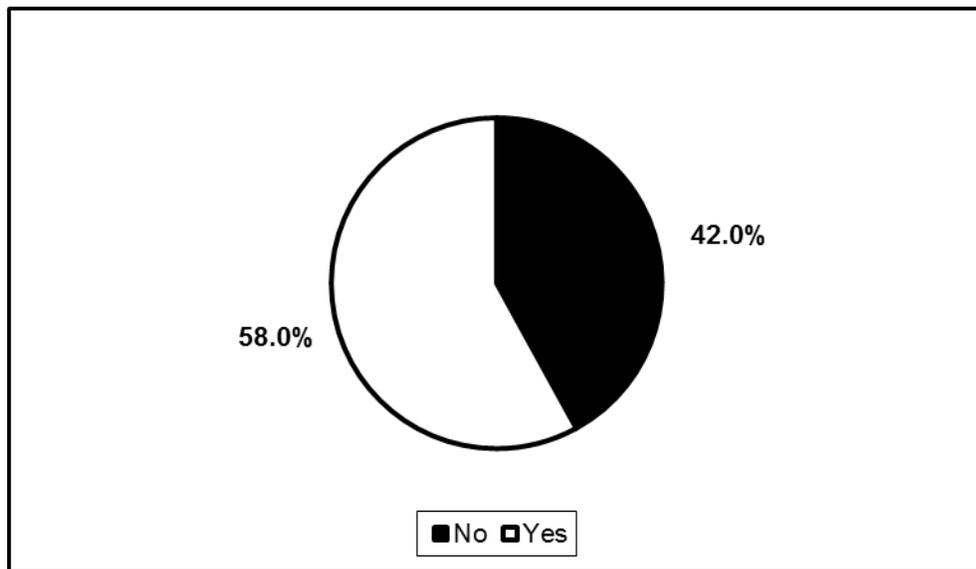


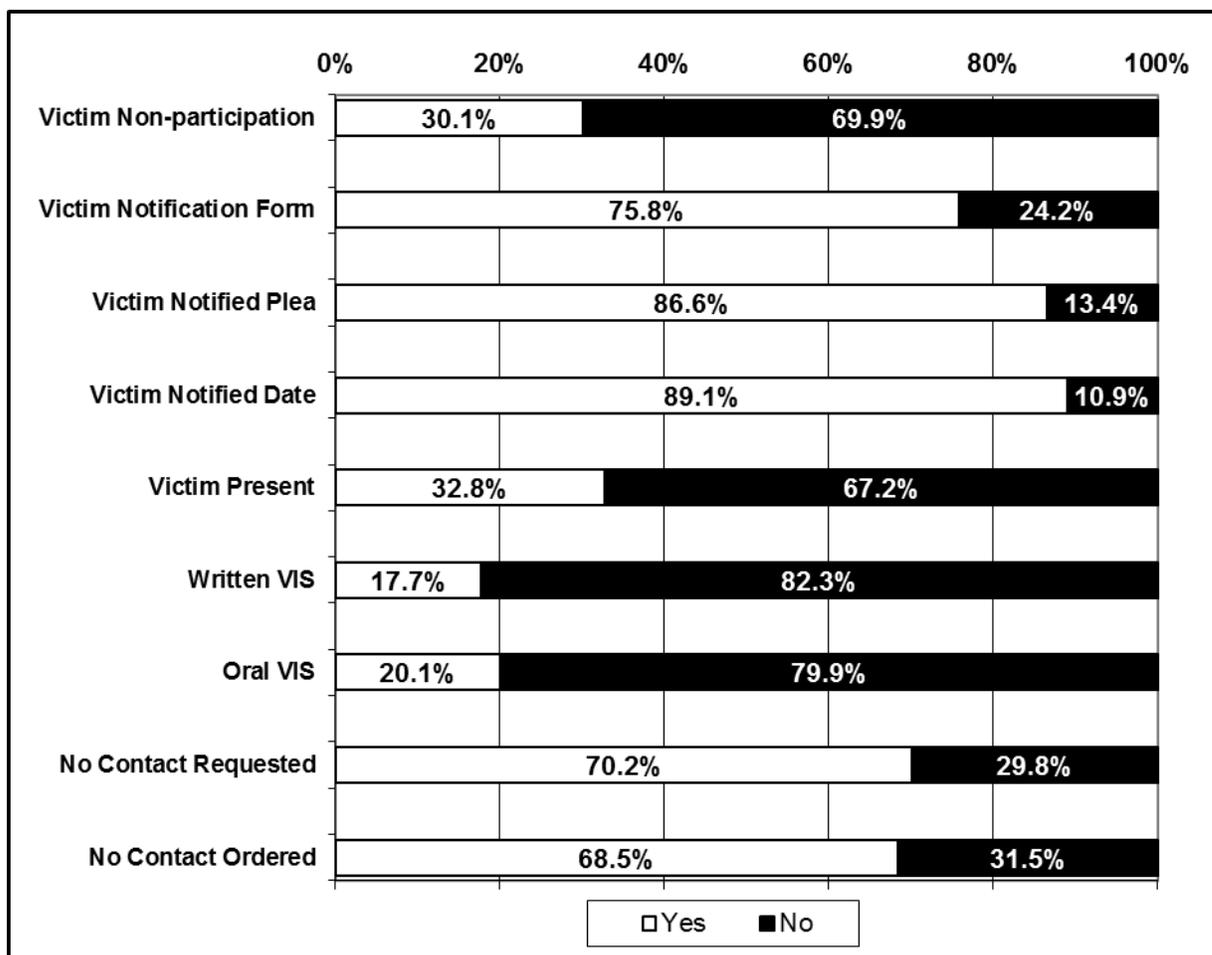
Figure 20 illustrates that 58% of worksheets with valid information on the victim-related questions indicated there was a victim. The responses to the items in the *Victim Information* section of the worksheet for cases involving a victim are summarized in Figure 21.

**Figure 20. Distribution of Guidelines Cases by Whether Victim Involved, Fiscal Year 2017**



In 30.1% of cases involving a victim, the victim did not participate, was not located, did not maintain contact with involved parties, or waived his/her rights. A Crime Victim Notification and Demand for Rights form was filed by the victim in 75.8% of cases. Most victims (86.6%) were notified of the terms and conditions of a plea agreement prior to entry of a plea. Similarly, 89.1% of victims were notified of the court date for sentencing. Approximately one-third of victims were present at sentencing. A written Victim Impact Statement (VIS) was prepared in 17.7% of cases involving a victim, while the victim or state made a request for an oral VIS in 20.1% of cases. Finally, the victim or state made a request that the defendant have no contact with the victim in 70.2% of cases, and the sentencing judge ordered the defendant to have no contact with the victim in 68.5% of cases involving a victim.

**Figure 21. Distribution of Guidelines Cases by Victim Information, Fiscal Year 2017**



## PLANNED ACTIVITIES FOR 2018

The work of the MSCCSP in 2018 will largely be driven by pressing policy issues and concerns that develop throughout the course of the year. Additionally, the MSCCSP will address several other important activities in 2018. Specifically, the MSCCSP will work to implement the revised juvenile delinquency component of the offender score that was adopted by vote at the September 19 and December 11, 2017, meetings. The MSCCSP will also move forward with the execution of recommended actions one through four from the MSCCSP's January 2018 JRA-mandated study on alternatives to incarceration, while continuing to collaborate with criminal justice partners to collect data for the Justice Reinvestment Oversight Board to assess the impact of the JRA.

The MSCCSP will continue to administer Maryland's sentencing guidelines by completing routine activities, such as, collecting sentencing guidelines worksheets, maintaining the sentencing guidelines database, monitoring judicial compliance with the guidelines, and providing sentencing guidelines education and training. Additionally, the MSCCSP will review all criminal offenses and changes in the criminal code resulting from the 2018 Legislative Session and adopt seriousness categories for these offenses.

Furthermore, the MSCCSP will continue to deploy MAGS in a gradual statewide roll-out of the automated system. The MSCCSP expects to deploy MAGS in five new jurisdictions in 2018. The MSCCSP staff will work with individual jurisdictions to establish secure login procedures for access to MAGS and will provide orientation and training on the use of the application. The MSCCSP will also coordinate with the AOC to continue planning for interoperability with the Judiciary's new case management system, MDEC.

The activities described above are just a few of the many tasks that will be completed by the MSCCSP in 2018 to support the consistent, fair, and proportional application of sentencing practice in Maryland.

# APPENDICES

# Appendix A:

## Sentencing Guidelines Matrices

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

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

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

***P=Probation, M=Months, Y=Years***

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

***P=Probation, M=Months, Y=Years***

# Appendix B:

## Maryland Sentencing Guidelines Worksheet (version 1.8)

MARYLAND SENTENCING GUIDELINES WORKSHEET				OFFENDER NAME - Last, First, Middle		SID#		SEX M ___ F ___		BIRTHDATE		JURISDICTION	
PSI		DATE OF OFFENSE		DATE OF SENTENCING		DISPOSITION TYPE		REPRESENTATION		ETHNICITY		RACE	
Yes ___ No ___		CONVICTED OFFENSES		ABA plea agreement ___ Non-ABA plea agreement ___ Plea, no agreement ___ Court trial ___		Jury trial ___ Reconsideration ___ Review ___		Private ___ Public Defender ___ Court Appointed ___ Self ___		Hispanic/Latino Origin ___ Yes ___ No ___ Victim Court Costs Imposed ___ Yes ___ No ___		Black ___ White ___ Asian ___ Other ___ Native Hawaiian/Pacific Islander ___ American Indian/Alaskan Native ___	
CONVICTED OFFENSE TITLE				I-VII		CJIS CODE		MD CODE, ART, & SECTION		STAT. MAX		MAND. MIN	
1 <sup>st</sup> Convicted Offense													
2 <sup>nd</sup> Convicted Offense													
3 <sup>rd</sup> Convicted Offense													
OFFENSE SCORE(S) - Offense Against a Person Only				OFFENDER SCORE				GUIDELINES RANGE		ACTUAL SENTENCE - Imposed, Suspended, Time Served, Probation, Restitution, Fine, Corrections Options Programs (Drug Treatment Court, Home Detention, Etc.)			
<b>1<sup>st</sup> Off</b> 2 <sup>nd</sup> Off 3 <sup>rd</sup> Off 1 1 1 = V - VII 3 3 3 = IV 5 5 5 = III 8 8 8 = II 10 10 10 = I				<b>A. Relationship to CJIS When Instant Offense Occurred</b> 0 = None or Pending Cases 1 = Court or Other Criminal Justice Supervision <b>B. Juvenile Delinquency</b> 0 = 23 years or older or crime-free for 5 years or no more than 1 finding of a delinquent act 1 = Under 23 years old and 2 or more findings of a delinquent act or 1 commitment 2 = Under 23 years and committed 2 or more times <b>C. Prior Adult Criminal Record</b> 0 = None 3 = Moderate 1 = Minor 5 = Major <b>D. Prior Adult Parole/Prob Violation</b> 0 = No 1 = Yes				<b>1<sup>st</sup> Con. Off.</b> _____ TO _____		<b>1<sup>st</sup> Convicted Offense</b> For Theft, Fraud, and Related Crimes, please indicate: <input type="checkbox"/> Economic loss \$ _____; <input type="checkbox"/> Unknown Amount Subsequent Offender Piled _____; <input type="checkbox"/> Restitution Requested _____; <input type="checkbox"/> Restitution Proven _____ <b>2<sup>nd</sup> Convicted Offense</b> For Theft, Fraud, and Related Crimes, please indicate: <input type="checkbox"/> Economic loss \$ _____; <input type="checkbox"/> Unknown Amount Subsequent Offender Piled _____; <input type="checkbox"/> Restitution Requested _____; <input type="checkbox"/> Restitution Proven _____ <b>3<sup>rd</sup> Convicted Offense</b> For Theft, Fraud, and Related Crimes, please indicate: <input type="checkbox"/> Economic loss \$ _____; <input type="checkbox"/> Unknown Amount Subsequent Offender Piled _____; <input type="checkbox"/> Restitution Requested _____; <input type="checkbox"/> Restitution Proven _____			
OFFENSE SCORE(S)				OFFENDER SCORE				Overall Guidelines Range		Was the offender sentenced to a Corrections Options program under Commission criteria?			
_____				_____				Multiple Counts Only _____ TO _____		Drug Court ___ Yes ___ No ___ Other ___ Yes ___ No ___ Additional Information or Institutional/Parole Recommendation _____ Title _____ Sentencing Judge (Please Print) _____ Sentencing Judge's Signature _____			
VICTIM INFORMATION				SENTENCE DEPARTURE INFORMATION				50% of Sentence Announced for COVs		Parole Notification			
Victim Yes ___ No ___ Victim Non-participation Yes ___ No ___ Victim Notification Form Yes ___ No ___ Victim Notified Plea Yes ___ No ___ Victim Notified Date Yes ___ No ___ Victim Present Written VIS Yes ___ No ___ Oral VIS Yes ___ No ___ No Contact Requested Yes ___ No ___ No Contact Ordered Yes ___ No ___				If the actual sentence departs from the guidelines range, please indicate the Court's reason(s) using the numerical code(s) on the list of common departure factors in the manual, if applicable. _____ <b>Departure Code 9 or 18 (Please Explain):</b> _____				Yes ___ No ___		Yes ___ No ___			

COPIES: White - Judge; Blue - Sentencing Commission; Green - Attach to Commitment or Probation Order; Yellow - File; Pink - Prosecution; Gold - Defense 4/2013 (1.8)

## Appendix C:

### Sentencing Guidelines Compliance and Average Sentence by Offense Type, Fiscal Year 2017 (Most Common Person, Drug, and Property Offenses)

Person Offenses	N	Guidelines Compliance			% Incarc <sup>1</sup>	Average Sentence Among Incarcerated	
		Within	Below	Above		Total Sentence	Total, Less Suspended
Assault, 2 <sup>nd</sup> Degree	945	85.6%	11.8%	2.6%	67.4%	5.3 years	1.2 years
Robbery	322	85.4%	13.7%	0.9%	88.2%	7.9 years	2.3 years
Wear, Carry, or Transport Handgun	218	95.9%	3.7%	0.5%	63.3%	2.5 years	0.7 years
Assault, 1 <sup>st</sup> Degree	190	68.4%	28.4%	3.2%	90.5%	13.6 years	4 years
Robbery with Dangerous Weapon	182	81.3%	17.6%	1.1%	94.5%	12 years	5 years
<b>Drug Offenses</b>							
Distribution Marijuana	565	91.5%	8.1%	0.4%	46.4%	3.1 years	0.5 years
Distribution Heroin	522	74.9%	24.5%	0.6%	79.1%	8.3 years	2.4 years
Distribution Cocaine	475	72.6%	26.6%	0.8%	77.5%	8.2 years	2.9 years
Possession Marijuana	197	94.3%	2.9%	2.9%	34.9%	0.5 years	0.2 years
Possession Cocaine	180	87.8%	10%	2.2%	70%	2.1 years	0.5 years
<b>Property Offenses</b>							
Burglary, 1 <sup>st</sup> Degree	258	74%	23.3%	2.7%	81%	10.1 years	3.7 years
Theft or Theft Scheme, At Least \$1,000 but Less Than \$10,000	192	83.9%	14.6%	1.6%	70.3%	5.6 years	1.4 years
Theft or Theft Scheme, Less Than \$1,000	169	81.7%	16.6%	1.8%	62.7%	1.2 years	0.4 years
Burglary, 2 <sup>nd</sup> Degree	166	75.9%	23.5%	0.6%	75.3%	6.8 years	2.3 years
Theft or Theft Scheme, At Least \$10,000 but Less Than \$100,000	116	82.8%	15.5%	1.7%	73.3%	7.1 years	2 years

<sup>1</sup> % Incarcerated includes those who are incarcerated pre-trial only, as well as those incarcerated after sentencing.

## Appendix D:

### Description of Types of Disposition

<b>Disposition Type</b>	<b>Description</b>
ABA Plea Agreement	The disposition resulted from a plea agreement that the court approved relating to a particular sentence, disposition, or other judicial action, and the agreement is binding on the court under Maryland Rule 4-243 (c).
Non-ABA Plea Agreement	The disposition resulted from a plea agreement reached by the parties but that was not approved by, and thus not binding on, the court.
Plea, No Agreement	The defendant pleaded guilty without any agreement from the prosecutor or judge to perform in a particular way.
Bench Trial	The disposition resulted from a trial without a jury in which the judge decided the factual questions.
Jury Trial	The disposition resulted from a trial in which the jury decided the factual questions.
Reconsideration	Reconsideration of a previously imposed sentence.
Review	Pursuant to Criminal Procedure Article, § 8-105, a panel review of a previously imposed sentence.

## Appendix E:

### Common Departure Reasons Listed on the Sentencing Guidelines Departure Reference Card

<b>Departure Code</b>	<b>Mitigating Reasons</b>
1	The parties reached a plea agreement that called for a reduced sentence.
2	Offender's minor role in the offense.
3	Offender was influenced by coercion or duress.
4	Offender had diminished capability for judgment.
5	Offender made restorative efforts after the offense.
6	Victim's participation in the offense lessens the offender's culpability.
7	Offender's commitment to substance abuse treatment or other therapeutic program.
8	Recommendation of State's Attorney or Division of Parole and Probation.
9	Other reason (not specified above).
<b>Departure Code</b>	<b>Aggravating Reasons</b>
10	Offender's major role in the offense.
11	The level of harm was excessive.
12	Special circumstances of the victim.
13	Offender exploited a position of trust.
14	Offender committed a "white collar" offense.
15	Offender's significant participation in major controlled substance offense.
16	The vicious or heinous nature of the conduct.
17	Recommendation of State's Attorney or Division of Parole and Probation.
18	Other reason (not specified above).