



MARYLAND STATE COMMISSION  
ON CRIMINAL SENTENCING POLICY

ANNUAL REPORT

2019

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State's Attorney

**Honorable Brian L. DeLeonardo**

Criminal Defense Attorney

**Richard A. Finci, Esquire**

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**Chief Douglas DeLeaver (October 2019 – Present)**

**Colonel William M. Pallozzi (May 2015 – June 2019)**

Local Detention Center

**Melinda C. Grenier (September 2019 – Present)**

**LaMonte E. Cooke (December 2011 – June 2019)**

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**Lisa M. Spicknall-Horner (September 2019 – Present)**

**Barbara Dorsey Domer (August 2015 – July 2019)**

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**Honorable David Moon (January 2020 – Present)**

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**Honorable Brian E. Frosh**

**(Kathleen C. Murphy, 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

**Robert L. Green (May 2019 – Present)**

**Stephen T. Moyer (January 2015 – May 2019)**

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

Maryland State Commission on  
Criminal Sentencing Policy

2019 | Annual Report



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## COMMISSION STAFF

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Molly Triece (through August 2019)

## INTERNS

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

Elizabeth Geary, University of Maryland

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# MSCCSP

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## Maryland State Commission on Criminal Sentencing Policy

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### Chair

Hon. Brett R. Wilson

### Vice-Chair

Hon. Shannon E. Avery

### Commissioners

Sen. Robert G. Cassilly

Del. Luke H. Clippinger

Chief Douglas DeLeaver

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William E. Koutroumpis

Hon. Patrice E. Lewis

Del. David Moon

Hon. James P. Salmon (Ret.)

Lisa M. Spicknall-Horner

### Executive Director

David A. Soulé, Ph.D.

January 27, 2020

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 2019 Annual Report of the MSCCSP.

This report details the 2019 activities of the MSCCSP. This work is highlighted by the completed statewide deployment of the Maryland Automated Guidelines System (MAGS), and adoption of an expanded grouping of designated corrections options allowing judges to utilize a broader range of alternatives to incarceration while remaining compliant with the sentencing guidelines. Additionally, the report summarizes circuit court sentencing practices and trends in Maryland for fiscal year 2019, 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 2020. 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 § 2-1257 of the State Government Article, Annotated Code of Maryland, five printed copies of the MSCCSP 2019 Annual Report were submitted 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 Brett R. Wilson  
Chair

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## 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 2019, the MSCCSP reviewed new and amended criminal laws from the 2019 Legislative Session, reviewed and classified previously unclassified offenses, made miscellaneous modifications to the Guidelines Offense Table, clarified the juvenile delinquency scoring instructions for calculating the offender's age as of the date of the offense when the sentencing event involves multiple dates of offenses, clarified the scoring instructions for part A of the offender score when a sentencing event involves multiple dates of offenses and different criminal justice system supervision statuses, adopted a proposal to review guidelines compliance for individual matrix cells, adopted a policy for responding to legislative proposals, reviewed sex offender registration as it pertains to the definition of criminal justice system involvement, and reviewed military adjudications as they apply to the calculation of the prior adult criminal record score.

In fiscal year 2019, the MSCCSP received guidelines worksheets for 11,005 sentencing events in the State's circuit courts. A worksheet was submitted for 93.2% of guidelines-eligible cases. Worksheets for 70.5% of the 11,005 sentencing events were submitted electronically using MAGS. The vast majority of cases were resolved by either an ABA plea agreement (48.5%) or a non-ABA plea agreement (35.4%). 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 year.

The overall guidelines compliance rate in fiscal year 2019 was 82.2%, 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 property offenses and drug offenses. A comparison of judicial compliance rates by type of disposition (plea agreement, plea with no agreement, bench trial, and jury trial) showed that compliance was most likely in cases adjudicated by a plea agreement. In contrast, compliance was least

likely in cases adjudicated by a bench trial. When considering compliance rates by both crime category and disposition, the highest compliance rate was observed for property offenses adjudicated by a bench trial. Drug offenses resolved by a bench trial had the lowest compliance rate, and all 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 2020. 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 2020 Legislative Session and adopt seriousness categories for new and revised offenses as needed. Additionally, the MSCCSP staff will continue work with programmers at the Department of Public Safety and Correctional Services (DPSCS) to release an updated version of MAGS. MAGS 9.0 will allow part A of the offender score to vary by offense, and will include additional updates requested by various MAGS users. Furthermore, the MSCCSP will continue coordination with the AOC to implement a statewide, aggregated worksheet status report. Finally, the MSCCSP has identified an ambitious list of new activities that the Commission will plan to address in 2020.

# 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 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 to cases prosecuted in Maryland circuit courts generally, 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, cases adjudicated in a juvenile court, 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 for 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.

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<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
	Cases adjudicated in a juvenile court
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 nonsuspended 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 electronically or in paper form for guidelines-eligible criminal cases prosecuted in circuit court to determine the recommended sentencing outcome and to record sentencing data.<sup>2</sup> 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)). The electronic worksheets are completed and submitted via the Maryland Automated Guidelines System (MAGS), and the paper worksheets are completed by hand, then 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.

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<sup>2</sup> As of October 1, 2019, all 24 Maryland jurisdictions complete worksheets electronically.



## 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.



MSCCSP Chair, The Honorable  
Brett R. Wilson

On September 13, 2019, Governor Lawrence J. Hogan, Jr. appointed the Honorable Brett R. Wilson, Judge, Circuit Court for Washington County, 4<sup>th</sup> Judicial Circuit, as the chair of the MSCCSP. Judge Wilson replaced the Honorable Glenn T. Harrell, Jr., a retired judge from the Court of Appeals, 4<sup>th</sup> Appellate Judicial Circuit, Prince George's County, who served as the Commission's Chair since 2015. Other Governor appointees include William E. Koutroumpis, a member of the public, and Lisa M. Spicknall-Horner, State Program Director for Mothers Against Drunk Driving, who serve as the two public representatives on the Commission; Chief Douglas DeLeaver, retired, 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; Melinda C. Grenier, Assistant Director for the Community Services Division of the Frederick County Sheriff's Office, 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; Molly Knipe, CEO for the YWCA of Annapolis and Anne Arundel 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 September 16, 2019, Molly Knipe replaced the Honorable Laura L. Martin, State's Attorney for Calvert County, who served as a member of the MSCCSP from 2005 through 2018. Effective October 24, 2019, Chief Douglas DeLeaver replaced Colonel William M. Pallozzi, Secretary of State Police, who served as a member of the MSCCSP from 2015 to 2019. Effective September 13, 2019, Melinda C. Grenier replaced Lamonte E. Cooke, Director of Correctional Services for Queen Anne's County, who served as a member of the MSCCSP from 2011 to 2019. Effective September 16, 2019, Lisa M. Spicknall-Horner replaced Barbara Dorsey Domer, a retired Frederick County Circuit Court Administrator, who served as a member of the



MSCCSP from 2015 to 2019. Governor Hogan reappointed Richard A. Finci to serve in his respective position on September 13, 2019.

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 Robert G. Cassilly and Delores G. Kelley. The Speaker of the House is also responsible for two appointments: Delegates Luke H. Clippinger and Charles E. Sydnor III. Then Speaker of the House, Michael E. Busch, appointed Delegate Luke H. Clippinger to the MSCCSP in February 2019. The Speaker of the House, Adrienne A. Jones, appointed Delegate Charles E. Sydnor III to the MSCCSP effective July 1, 2019. Delegates Clippinger and Sydnor replaced Delegate Joseph F. Vallario, who served as a member of the MSCCSP from its inception in 1999 through 2018, and Delegate Curtis S. Anderson, who served as a member of the MSCCSP from 2003 through June 2019.

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), Robert L. Green. On May 13<sup>th</sup>, 2019, Robert L. Green replaced as Secretary of the DPSCS Stephen T. Moyer, who served as Secretary and a member of the MSCCSP from 2015 to 2019.

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 the Honorable Brian L. DeLeonardo, Richard A. Finci, and Senator Delores G. Kelley. 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 sentencing guidelines and routinely 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



## DEPARTMENT OF CRIMINOLOGY AND CRIMINAL JUSTICE

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 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 2019

The MSCCSP held four meetings in 2019. The meetings occurred on May 7, July 9, September 17, and December 10. In addition, the Commission held its annual public comments hearing on December 10. The minutes for all Commission meetings are available on the Commission's website ([www.msccsp.org](http://www.msccsp.org)).<sup>3</sup> The following discussion provides a review of the Commission's activities in 2019.

### Review of New and Amended Offenses Passed During the 2019 Legislative Session

The MSCCSP reviewed new criminal laws from the 2019 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 2019 Legislative Session

The MSCCSP reviewed five new offenses passed during the 2019 Legislative Session and voted for their respective seriousness categories, shown in Table 2, during the July 9 and September 17 meetings. After promulgating the proposed classifications for these new offenses through the COMAR review process, the MSCCSP adopted these updates effective November 4, 2019.

**Table 2. Guidelines Offense and Adopted Seriousness Category Related to New Offenses, 2019 Legislative Session**

Legislation	Annotated Code of Maryland	Offense	Statutory Maximum	Adopted Seriousness Category
Chapter 54 (HB0787)	CR, §3-602.2	<b>Abuse and Other Offensive Conduct</b> Knowingly fail to provide the required notice or make the required written report of suspected abuse or neglect of a child	3 years	VI

<sup>3</sup> The minutes for the December 10 meeting will be available on the MSCCSP website after the Commission reviews and approves the minutes at its next meeting, scheduled for May 12, 2020.

Legislation	Annotated Code of Maryland	Offense	Statutory Maximum	Adopted Seriousness Category
Chapter 388 (SB0561)	CR, §14-104	<b>Abuse and Other Offensive Conduct</b> Commit a crime a violence against another person when the person knows or believes that the other person is pregnant <sup>4</sup>	10 years	IV
Chapters 23 and 24 (HB0734/SB0689)	CR, §3-1202	<b>Labor Trafficking</b> Take, place, etc., another by force, fraud, or coercion to provide services or labor; benefiting from services or labor induced by force, fraud, or coercion; aid or conspire with another to commit these offenses	25 years	II
Chapter 20 (HB0707)	TR, §21-902(i)	<b>Motor Vehicle Offense</b> Driving while under the influence of alcohol, impaired by alcohol, impaired by drugs or drugs and alcohol, or impaired by CDS; driving while under the influence or impaired while transporting a minor—4 <sup>th</sup> or subsequent offense, or previous conviction for negligent homicide or injury by motor vehicle or vessel while under the influence or impaired	10 years	IV
Chapters 26 and 27 (SB0103/HB0181)	CR, §3-805(b)(6) CR, §3-805(e)(2) (penalty)	<b>Telecommunications and Electronics, Crimes Involving</b> Use of electronic communication to alarm or annoy another, etc., with the intent to induce a minor to commit suicide	10 years	IV

### Amended Offenses Passed During the 2019 Legislative Session

The MSCCSP considered amended criminal laws from the 2019 Legislative Session and identified ten offenses that required review due to changes regarding their incarceration penalties. Table 3 notes the ten relevant amended offenses and the various revisions. The MSCCSP reviewed these offenses and voted for their seriousness categories, shown in Table 3, during the July 9 meeting. After promulgating these proposed offense table updates through the COMAR review process, the MSCCSP adopted these revisions effective November 4, 2019.

<sup>4</sup> The COMAR review process for this offense was initiated in December 2019. The corresponding seriousness category is expected to be adopted on April 1, 2020.

**Table 3. Guidelines Offenses and Adopted Seriousness Categories Related to Amended Offenses, 2019 Legislative Session**

<b>Legislation</b>	<b>Annotated Code of Maryland</b>	<b>Offense</b>	<b>Prior Stat. Max. / Seriousness category</b>	<b>New Stat. Max. / Seriousness category</b>
Chapter 495 (SB0842)	CR, §12-102(b)	<b>Gambling – General Provisions</b> Make or sell a book or pool on the result of a race, etc.; establish, keep, etc., a building, vessel, or place for the purpose of betting, etc.; receive, become the depository of, etc., money to be bet, etc.	1 year / VII	6 months / VII
Chapter 495 (SB0842) <sup>5</sup>	CR, §12-103	<b>Gambling – General Provisions</b> Betting, wagering, or gambling; or playing any other gaming device or fraudulent trick	2 years / VII	Fine only / NA
Chapter 20 (HB0707)	CR, §2-505(c)(1)	<b>Manslaughter and Related Crimes</b> Negligent homicide by motor vehicle or vessel while impaired by drugs, 1 <sup>st</sup> offense	3 years / VI	5 years / V
Chapter 20 (HB0707)	CR, §2-505(c)(2)	<b>Manslaughter and Related Crimes</b> Negligent homicide by motor vehicle or vessel while impaired by drugs, subsequent	5 years / V	10 years / IV
Chapter 20 (HB0707)	TR, §21-902(b)(2)(ii)(1)	<b>Motor Vehicle Offense</b> Driving while impaired by alcohol, while transporting a minor, 1 <sup>st</sup> offense	6 months / VII	1 year / VII
Chapter 20 (HB0707)	TR, §21-902(c)(2)(ii)(1)	<b>Motor Vehicle Offense</b> Driving while impaired by drugs or drugs and alcohol, while transporting a minor, 1 <sup>st</sup> offense	6 months / VII	1 year / VII
Chapter 20 (HB0707)	TR, §21-902(b)(2)(ii)(2)	<b>Motor Vehicle Offense</b> Driving while impaired by alcohol, while transporting a minor, 2 <sup>nd</sup> offense	1 year / VII	2 years / VI
Chapter 20 (HB0707)	TR, §21-902(c)(2)(ii)(2)	<b>Motor Vehicle Offense</b> Driving while impaired by drugs or drugs and alcohol, while transporting a minor, 2 <sup>nd</sup> offense	1 year / VII	2 years / VI

<sup>5</sup> This bill made certain gambling acts a civil offense punishable by a fine, effective October 1, 2019. Since the guidelines apply only to criminal offenses, this offense was removed from the Guidelines Offense Table.

Legislation	Annotated Code of Maryland	Offense	Prior Stat. Max. / Seriousness category	New Stat. Max. / Seriousness category
Chapter 20 (HB0707)	TR, §21-902(h)	<b>Motor Vehicle Offense</b> Driving while under the influence of alcohol, impaired by alcohol, impaired by drugs or drugs and alcohol, or impaired by CDS; driving while under the influence or impaired while transporting a minor—3 <sup>rd</sup> offense	3 years-4 years / V	5 years / V
Chapters 26 and 27 (SB0103/HB0181)	CR, §3-805(b)(1)-(5) CR, §3-805(e)(1) (penalty)	<b>Telecommunications and Electronics, Crimes Involving</b> Use of electronic communication to alarm or seriously annoy another; or to inflict serious emotional distress on a minor or place a minor in fear of death or serious bodily injury; or that has the effect of intimidating or harassing a minor and causing physical injury or serious emotional distress	1 year / VII	3 years / VI

### Miscellaneous Modifications to the Guidelines Offense Table in 2019

In its continued review of seriousness categories for all criminal offenses sentenced in the State's circuit courts, the MSCCSP identified two offenses with maximum incarceration penalties of one year or more, not previously classified by the Commission. The Commission reviewed these two previously unclassified offenses, listed in Table 4, during the July 9 and December 10 meetings, and voted for seriousness categories and offense type classifications consistent with those for similar offenses. After promulgating through the COMAR review process, the MSCCSP adopted the proposed classification of Environment Article (EN), § 9-228(f)(2); penalty (EN, § 9-268.1(a)(2)) -- *Disposing of scrap tires for monetary or financial gain by any means other than through a licensed scrap tire hauler or by delivering the tires to an approved facility*, effective November 4, 2019. The proposed classification of Common Law, *Conspiracy to commit a lawful act by unlawful means*, is pending promulgation through the COMAR review process and will be adopted in 2020.

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

Annotated Code of Maryland	Offense	Statutory Maximum	Offense Type	Adopted Seriousness category
EN, §9-228(f)(2) EN, §9-268.1(a)(2) (penalty)	<b>Public Health and Safety, Crimes Against</b> Disposing of scrap tires for monetary or financial gain by any means other than through a licensed scrap tire hauler or by delivering the tires to an approved facility	5 years	Property	VI
Common Law	<b>Conspiracy</b> Conspiracy to commit a lawful act by unlawful means	Life	Person, Drug, Property	Same seriousness category as most serious unlawful means

In 2019, four previously unlisted offenses that carry a maximum penalty of one year or less were added to the Guidelines Offense Table. By MSCCSP rule, any offense with a maximum incarceration penalty of one year or less is automatically assigned a seriousness category VII (COMAR 14.22.01.09B(2)(f)) unless the Commission chooses to adopt a different seriousness category. These previously unlisted offenses, as cited in Table 5, were added to the Guidelines Offense Table due to their conviction frequency in circuit court sentencings and requests from practitioners. After promulgation through the COMAR review process, the MSCCSP added these offenses to the Guidelines Offense Table, effective November 4, 2019.

**Table 5. Previously Unlisted Offenses with a Maximum Penalty of One Year or Less**

Annotated Code of Maryland	Offense	Statutory Maximum	Offense Type	Adopted Seriousness category
CR, §10-202	<b>Disturbing the Peace, Disorderly Conduct, and Related Crimes</b> Keeping a disorderly house	6 months	Person, Drug, Property	VII
TR, §20-105	<b>Motor Vehicle Offense</b> Failure of driver involved in accident with unattended vehicle or property to notify the driver, owner, or person in charge of the damaged vehicle or property	2 months	Property	VII

Annotated Code of Maryland	Offense	Statutory Maximum	Offense Type	Adopted Seriousness category
ED, §26-101	<b>School Security</b> Disturb school operations; molest or threaten to harm an individual on school property, etc.; threaten to harm a school employee at home	6 months	Person	VII
ED, §26-102	<b>School Security</b> Trespass on school grounds; refuse to leave school grounds; damage or deface school grounds	6 months	Property	VII

### Expansion of Guidelines-Compliant Alternatives to Incarceration

Sentences to corrections options are deemed guidelines 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. Effective July 1, 2019, the MSCCSP expanded the definition of corrections options to include all problem-solving courts, work release, and weekend (or other discontinuous) incarceration. In addition, corrections options now include programs established by the DPSCS and/or local correctional agencies, provided the program meets the Commission's criteria (specified below). Such programs were previously limited to those established by the State Division of Correction. Lastly, the MSCCSP agreed to remove from the definition of corrections options High Intensity Drug Trafficking Areas (HIDTA) substance abuse treatment programs since the existing HIDTA-funded substance abuse treatment programs in Maryland include only select drug courts, participation in which is already defined as a corrections option. Expanding the scope of alternatives to incarceration defined as "corrections options" is important because it allows a judge to impose these specific alternatives in lieu of an imprisonment sentence while remaining compliant with the sentencing guidelines.

Effective July 1, 2019, corrections options are defined as follows:

- Home detention (including a recommendation for home detention that is pending approval);
- A corrections options program established under law which requires the individual to participate in home detention, inpatient/residential treatment, or other similar programs involving terms and conditions that constitute the equivalent of confinement;



- Inpatient drug or alcohol counseling under Health General Article (HG), Title 8, Subtitle 5, Annotated Code of Maryland;
- Participation in a problem-solving court, including a drug court, mental health court, family/dependency court, veterans court, or other problem-solving court as defined by the Administrative Office of the Courts' Office of Problem Solving Courts;
- A sentence, with required substance abuse treatment, for the possession, administration, obtainment, etc. of controlled dangerous substances (CDS) currently outlined in Criminal Law Article (CR), § 5-601(c) and pursuant to CR, § 5-601(e)(3);
- Work release (including a recommendation for work release that is pending approval); or
- Weekend (or other discontinuous) incarceration.
- Corrections options include programs established by the Department of Public Safety and Correctional Services (DPSCS) and/or local correctional agencies, if the program meets the Commission's criteria, as described above.

### **Clarifying the Juvenile Delinquency Scoring Instructions for Calculating an Offender's Age as of the Date of the Offense**

The juvenile delinquency component of the offender score considers (1) the age of the offender on the date he or she committed the offense for which he or she is being sentenced and (2) the number of findings of a delinquent act within five years of the date of the offense being sentenced. This latter time period is referred to as the five-year look-back period. When there are multiple offenses with different offense dates being sentenced together, the instructions indicate that the five-year look-back period is based on the date of the "most recent instant offense." While the instructions are clear that the five-year look-back period is based on the date of the most recent instant offense, they do not specify how the offender's age "by the date of the offense" is to be calculated when there are multiple offense dates. To provide clarity to practitioners, the MSCCSP, at its May 7 meeting, adopted a clarification to the juvenile delinquency scoring instructions to state that the offender's age by the date of the offense is based on the date of the most recent instant offense. The MSCCSP noted that this clarification does not constitute a rule change, as it was the Commission's intention in developing the juvenile delinquency score that the calculation of both the offender's age and the look-back period is based on the date of the most recent instant offense. After promulgating the proposed revisions through the COMAR review process, the MSCCSP adopted the revisions to the juvenile delinquency scoring instructions effective November 4, 2019.

## **Clarifying the Instructions for Part A of the Offender Score When a Sentencing Event Contains Multiple Offenses Committed on Different Dates**

Part A of the offender score instructs if the offender was in the criminal justice system (CJS) as the result of an adjudication of guilt as an adult, the person completing the sentencing guidelines worksheet shall assign a score of 1. The Maryland Sentencing Guidelines Manual (MSGM) further instructs that the offender score shall be calculated the same across all offenses in a sentencing event. Multiple practitioners inquired as to whether one point should apply in a scenario where an offender is being sentenced for offenses that were committed on different dates and one was committed while under CJS supervision and the other while not under CJS supervision. Two sample cases provided in the MSGM (Version 11.0) instruct that the highest offender score should be used to calculate the guidelines across all offenses contained within a sentencing event, however the guidelines instructions do not address specifically a scenario where an offender's CJS supervision status differs between offenses contained in the same sentencing event.

The Commission discussed three possible solutions to the issue at its May 7 and July 9 meetings. The first option would instruct practitioners to calculate the offender score based on the highest possible score. In this scenario, an offender would receive one point for part A if the offender was under CJS supervision at the time any of the instant offenses occurred. The second option would instruct practitioners to award one point for part A only if the offender was under CJS supervision at the time all of the instant offenses occurred. The third option would allow for part A of the offender score to differ across offenses based on the offender's CJS involvement at the time of each offense. To provide the most accurate information to the sentencing judge, the Commission voted, at its July 9 meeting, to adopt the third option, which allows for part A of the offender score to differ across offenses contained within the same sentencing event. This revision to the guidelines requires reprogramming of MAGS to allow for part A of the offender score to differ across offenses. It is anticipated that reprogramming of MAGS will be complete in early 2020. The proposed revisions have been submitted to COMAR for promulgation through the review process, with an expected implementation date of February 1, 2020.

## **Adoption of Proposal to Review Guidelines Compliance for Individual Matrix Cells**

Review of compliance with the guidelines is one of the primary responsibilities of the MSCCSP. In accordance with this responsibility, the MSCCSP periodically conducts detailed reviews by examining compliance within individual cells of each sentencing matrix (person, drug, and property). While overall compliance rates reflect a strong consensus for the guidelines in general, cell-by-cell analyses may reveal compliance discrepancies that are masked by analyses at the aggregate level. The MSCCSP typically undertakes these cell-by-cell reviews every three to five years. The last detailed review was authorized by the Commission in May 2014 and concluded in December 2015 with a vote to revise the sentencing matrix for seriousness categories IV and V drug offenses, effective July 1, 2016.

At its May 7, 2019, meeting the MSCCSP discussed a plan to complete the next analysis of guidelines compliance by individual matrix cells. Noting the recent revisions to the sentencing matrix for seriousness categories IV and V drug offenses, and the significant revisions to the seriousness categories for many common property offenses and CDS possession offenses in response to the Justice Reinvestment Act (JRA) effective October 1, 2017, the Guidelines Subcommittee advised that a review of the matrix cells for seriousness categories VII, V, and IV drug offenses and all property offenses be postponed until sufficient data have been collected to fully capture the impact of the guidelines changes on these cells. Consistent with this recommendation, the Commission voted unanimously to adopt a proposal to postpone the next review of guidelines compliance for individual cells until early 2021, at which time there would be three full calendar years of post-JRA sentencing guidelines data (i.e., calendar years 2018–2020).

## **Adoption of Policy for MSCCSP Response to Legislative Proposals**

At the July 19, 2019 meeting, the MSCCSP adopted a formal policy to allow the Commission to respond in a timely and efficient manner to legislation that directly affects the sentencing guidelines and/or the operations of the MSCCSP. Given that the Commission does not typically meet in-person during the Legislative Session, the policy specifies that the MSCCSP will schedule a conference call for the purpose of soliciting feedback and to request a vote whether to support (with or without amendments), oppose, or take no position on the proposed legislation. The MSCCSP will provide prompt notice of the scheduled date and time for the conference call and will offer public access to the teleconference by publishing a call-in number on the MSCCSP website.

## **Review of Sex Offender Registration as it Pertains to the Offender Score Definition of Criminal Justice System Involvement**

In 2016, the MSCCSP received a question from a practitioner regarding sex offender registration and the criminal record decay factor. Part C of the offender score, the prior adult criminal record, includes instructions for the application of a criminal record decay factor. The instructions state, if an offender has lived in the community for at least ten years prior to the instant offense without CJS involvement resulting from an adjudication of guilt or a plea of nolo contendere, the criminal record shall be reduced by one level: from Major to Moderate, from Moderate to Minor, or from Minor to None. An offender was in the criminal justice system if the offender was on parole, on probation, incarcerated, on work release, on mandatory supervision, was an escapee, or had a comparable status. An offender is not considered to be in the criminal justice system if the offender was on unsupervised probation for an offense not punishable by imprisonment. The practitioner questioned whether sex offender registration would qualify as CJS involvement and, therefore, preclude application of the decay factor. CJS involvement is also a factor in part A of the offender score, which measures the offender's relationship to the CJS as of the date of the instant offense.

In 2016, after the question was first presented, the Guidelines Subcommittee discussed sex offender registration as it pertains to both the criminal record decay factor and part A of the offender score. At the time, the Subcommittee did not reach a consensus as to whether sex offender registration should be defined as CJS involvement. Given its relative infrequency, the Subcommittee recommended to the full Commission and the full Commission agreed to table the issue.

In 2019, MSCCSP staff received additional questions regarding sex offender registration and its application to the offender score. The Commission discussed the matter at its September 17 meeting. The Commission reviewed Maryland's sex offender registration laws and case law related to the civil versus criminal nature of the sex offender registry. The Commission engaged in a robust discussion of the implications of including versus excluding sex offender registration from the definition of CJS involvement. In favor of including sex offender registration in the definition of CJS involvement, it was noted that Maryland's Court of Appeals ruled that sex offender registration is essentially the same as probation, which is a criminal sanction. Sex offender registration entails supervision. Given that Maryland employs a descriptive guidelines system, based on factors contemplated by judges at sentencing, and given that registration is one factor considered by judges at sentencing, it may be argued that the definition of CJS

involvement should include registration. In favor of excluding sex offender registration from the definition of CJS involvement, it was noted that the goals of the sex offender registry differ from those of the CJS. Further, the Supreme Court ruled that sex offender registration is a civil requirement. For the latter reasons, the MSCCSP voted, at its September 17 meeting, against a motion to adopt language that would instruct practitioners to include sex offender registration in the definition of CJS involvement for the purposes of calculating part A of the offender score.

### **Review of Military Adjudications as They Apply to the Calculation of the Defendant's Prior Record Score**

In 2019, the MSCCSP received multiple inquiries as to whether military adjudications should be included in the calculation of the offender's prior adult criminal record score. The Uniform Code of Military Justice (UCMJ), which is located in the United States Code (U.S.C., Title 10), outlines military laws and regulations. Punishable offenses include offenses similar to those found in Maryland and other Federal and state laws, such as murder, rape, and manslaughter, as well as military-specific offenses, such as desertion and absence without leave (AWOL). All offenses outlined in the UCMJ provide for some period of incarceration. Some offenses also provide for dishonorable or bad-conduct discharge, dismissal, and/or forfeiture of pay. A violation of the UCMJ may be disposed of via an Article 15 proceeding or a summary, general, or special court-martial.

The MSGM instructs that the offender's prior adult criminal record score includes, with some exceptions, all adult adjudications proceeding the current sentencing event. The MSGM further instructs that a conviction that occurs outside of Maryland shall be classified based on the closest analogous offense. If no analogous offense exists in Maryland law, the offense shall be placed in the lowest seriousness category (VII) and the judge and parties notified. If the conviction is based on an act that is not a criminal violation in Maryland, the conviction shall be excluded from the offender's prior record. The MSGM does not explicitly address military adjudications.

At its December 10 meeting, the MSCCSP discussed military adjudications and their application to the prior adult criminal record score. The Commission recognized that Article 15 proceedings and summary courts-martial are not considered judicial proceedings. Additionally, certain military-specific offenses, such as desertion and absence without leave, are unique to the military and result from circumstances not encountered by civilians. For these reasons, the MSCCSP, at its December 10 meeting, voted to adopt a rule stating that military adjudications

shall be included in the offender's prior adult criminal record only if they result from a general or special court-martial, if the elements of the offense constitute an offense under Maryland law, and if the elements of the offense do not require the defendant's service in a military force. Dispositions that result from Article 15 proceedings or summary courts-martial and military-specific offenses are excluded from the prior adult criminal record. The proposed revisions will be submitted to COMAR in early 2020 for promulgation through the review process, with an expected implementation date of July 2020.

## **Revisions to the Sentencing Guidelines Worksheet**

This past year, the MSCCSP adopted several revisions to the Maryland sentencing guidelines worksheet. Effective July 1, 2019 and corresponding with the release of MAGS 8.0, the updated guidelines worksheet implements the following changes:

### **Separating *Reconsideration* and *Review* from the Disposition Types**

The first revision to the sentencing guidelines worksheet separates *Reconsideration* and *Review* from the disposition types. Previously, the disposition section of the worksheet listed several plea and trial disposition types as well as *Reconsideration* and *Review*. Separating *Reconsideration* and *Review* from the other disposition types permits users to indicate both how the case was disposed (plea or trial) as well as whether or not the sentencing was a reconsideration for a crime of violence or a three-judge panel review.

### **Modifying the Racial Categories**

The second revision to the sentencing guidelines worksheet modifies the racial categories so that they mirror those required by State Government (SG) Article, § 10-603. SG, § 10-603 specifies that forms requiring the identification of individuals by race include the following racial categories:

- American Indian or Alaska Native;
- Asian;
- Black or African American;
- Native Hawaiian or other Pacific Islander; and
- White.

While the previous worksheet's racial categories were similar to those of SG, § 10-603, there were minor differences between the two. The revised categories are consistent with the racial categories specified in SG, § 10-603 and provide for multiracial responses.

**Expanding Corrections Options and Capturing Other Alternatives to Incarceration**

The third revision to the sentencing guidelines worksheet allows the judge or judge's designee to further specify the type of corrections option and/or alternative to incarceration that may have been utilized at sentencing. Pursuant to the JRA (Senate Bill 1005/Chapter 515, Sec. 8, 2016), the MSCCSP conducted a study of alternatives to incarceration in Maryland. This [report](#) includes seven recommended actions. Recommended action #4 advises that the MSCCSP collect additional data on sentences utilizing alternatives to incarceration. Prior to July 1, 2019, the worksheet captured whether the offender's sentence included "drug court" and/or an "other" corrections options program, but it did not capture the nature of the "other" program. The revised worksheet specifies the "other" corrections options and also captures other alternatives to incarceration. The revised corrections options field provides the following list of options:

- Drug court;
- Other problem-solving court (explain);
- Home detention (including a recommendation for home detention that is pending approval);
- Suspended sentence per CR, § 5-601(e);
- HG, § 8-507 order;
- Work release (including a recommendation for work release that is pending approval);
- Weekend or other discontinuous incarceration;
- Inpatient substance abuse treatment;
- Inpatient mental health treatment; and
- Other (explain).

Additionally, the other alternatives to incarceration field provides the following list of other alternatives:

- Outpatient substance abuse treatment;
- Outpatient mental health treatment; and
- Other (explain).

**Removing the *Subsequent Offender Filed* and *Restitution Requested* Fields**

The fourth revision to the sentencing guidelines worksheet removes the *Subsequent Offender Filed* and *Restitution Requested* fields (note: *Subsequent Offender Proven* and *Restitution Proven* are retained). Worksheet preparers rarely complete the *Subsequent Offender Filed* and *Restitution Requested* fields, and the fields offer little analytic value. Additionally, removing these fields provides a counter-balance to the addition of items to collect more information regarding corrections options and other alternatives to incarceration.



The revisions to the sentencing guidelines worksheet will allow for more detailed analyses in the coming fiscal year. Additionally, the expansion of various fields, namely corrections options and other alternatives to incarceration, will allow the Commission to collect more detailed data that, in combination with recidivism data, may be used to identify effective and promising alternatives to incarceration and to help inform future sentencing decisions.

## 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. 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 Guidelines Calculator Tool (GLCT). The MSCCSP also provides on-site orientation sessions in advance of each jurisdiction's implementation of MAGS. In 2019, the MSCCSP provided 16 guidelines trainings/MAGS orientations attended by approximately 485 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 12 of Maryland's 24 jurisdictions (namely, Calvert County, Caroline County, Cecil County, Dorchester County, Kent County, Queen Anne's County, Somerset County, Talbot County, Washington County, Wicomico County, Worcester County and Baltimore City). 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 links to the MAGS homepage and the GLCT, text-searchable and print-friendly copies of the most recent version of the MSGM and the Guidelines Offense Table, an instructional manual and training videos for MAGS, 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



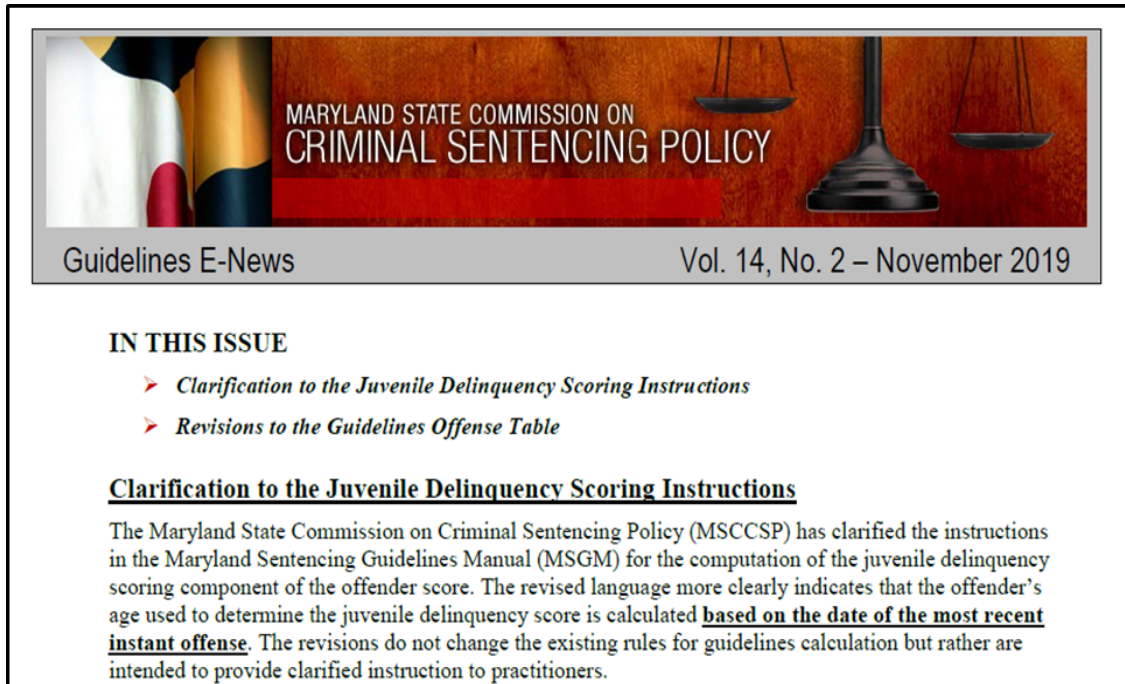
sentences, and other relevant reports. The MSCCSP website also provides minutes from prior Commission meetings and the date, location, and agenda for upcoming meetings. Finally, the MSCCSP website enables Google translate to provide equal access in approximately 100 languages. This process ensures the MSCCSP website is compliant with Senate Bill 29/Chapter 733 of the Laws of Maryland (2018).

The MSCCSP released three updates to the MSGM in 2019. MSGM 10.2 (released March 1, 2019) clarifies that cases adjudicated in juvenile court are excluded from guidelines coverage. MSGM 11.0 (released July 1, 2019) provides an expanded grouping of designated corrections options; several revisions to the guidelines worksheet; and updated sample cases. MSGM 11.1 (released on November 4, 2019) includes clarified instructions for the computation of the juvenile delinquency scoring component of the offender score; and an updated Guidelines Offense Table to reflect classification of new and amended offenses passed during the 2019 Legislative Session, the classification of one previously unclassified offense (EN, § 9-228(f)(2); penalty (EN, § 9-268.1(a)(2)).

In addition to providing training and education programs, the MSCCSP staff is available via phone (301-403-4165) and e-mail ([mcccsp@umd.edu](mailto:mcccsp@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 2019, 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 1) 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 [November 2019 edition](#) highlighted clarified instructions for the computation of the juvenile delinquency scoring component of the offender score, among other notable updates to the Guidelines Offense Table.

### Image 1. Guidelines E-News, Vol.14, Issue No. 2



### 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 2019, the Commission responded to approximately 40 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 and/or data. The MSCCSP may provide an electronic data file created from the information collected on the sentencing guidelines worksheets to respond to data requests.

In 2019, the MSCCSP provided sentencing information and/or data to several committees/agencies including, but not limited to, the Governor's Office of Crime Control Prevention (GOCCP), the Maryland Administrative Office of the Courts, the Office of the Attorney General, the Office of the Public Defender, the Maryland Department of Legislative Services, the Maryland Senate Judicial Proceedings Committee, the Maryland Crime Victims' Resource Center, the Prince George's County State's Attorneys' Office, the Maryland Data

Analysis Center, 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 single count 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 responds to the Maryland Department of Legislative Services' 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 2019, the Commission provided information for more than 125 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. At the August 2019 National Association of Sentencing Commissions (NASC) conference in Alexandria, Virginia, Commissioner William Davis participated in a thought-provoking plenary session about sentencing guidelines and their potential to reduce racial disparities. In December 2019, Dr. Soulé presented to the Task Force to Study Crime Classification and Penalties (Chapter 372, 2019) regarding an offense database that the MSCCSP staff created to provide a comprehensive listing of criminal offenses in Maryland and specifically, to help guide the work of the Task Force.

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

The MSCCSP staff is responsible for compiling and maintaining the Maryland sentencing guidelines database, which contains data from guidelines worksheets submitted via MAGS, as well as data submitted via hard-copy paper sentencing guidelines worksheets. The MSCCSP staff conducts periodic reviews of the guidelines worksheets. The staff verifies accurate completion of the worksheets in an effort to reduce the likelihood of repeated mistakes, and contacts individuals who prepared inaccurate worksheets to discuss detected errors. When possible, the MSCCSP staff resolves detected errors.

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 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 updating 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.

### **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 users are encouraged to contact the MSCCSP staff with questions, feedback, or suggestions by phone (301-403-2707) or via e-mail ([msccsp@umd.edu](mailto:msccsp@umd.edu)).

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 2019, MAGS was available for use in all 24 circuit courts. Appendix F provides a MAGS deployment schedule. MAGS is accessible from the MSCCSP website at:

[www.msccsp.org/MAGS](http://www.msccsp.org/MAGS) (see Image 2).

**Image 2. MAGS Page of MSCCSP Website**

The key tasks completed in 2019 to continue the development and deployment of MAGS are summarized below.

**January 1, 2019:** The Carroll County Circuit Court began use of MAGS to initiate, edit, and submit all official sentencing guidelines worksheets.

**April 8, 2019:** The Anne Arundel County Circuit Court began use of MAGS to initiate, edit, and submit all official sentencing guidelines worksheets.

**July 1, 2019:** The MSCCSP released an updated version of MAGS (8.0) for immediate use. MAGS 8.0 provided several new features. The following is a summary of the most significant changes to MAGS.

- The Corrections Options field was moved from the *GLS/Overall Sentence* screen to a new *Alternatives to Incarceration* screen. The *Alternatives to Incarceration* screen was created to collect additional sentence information, specifically the use of various corrections options programs and other alternatives to incarceration. The Community Service and Fine fields were also moved from the *GLS/Overall Sentence* screen to the *Alternatives to Incarceration* screen, as these are additional alternatives to incarceration that may be utilized at sentencing.
- The Subsequent Offender Filed and Restitution Requested fields were removed from the *Offense Sentence* screen. These fields were rarely completed by practitioners, offered little analytic value, and were removed to balance the addition of the new *Alternatives to Incarceration* screen.
- The *GLS/Overall Sentence* screen now separates reconsiderations (for crimes of violence as defined under § 14–101 of the Criminal Law Article) and three-judge panel reviews from the other disposition types. Separating out reconsiderations and reviews allows users to indicate both how the case was disposed (plea or trial) as well as whether or not the

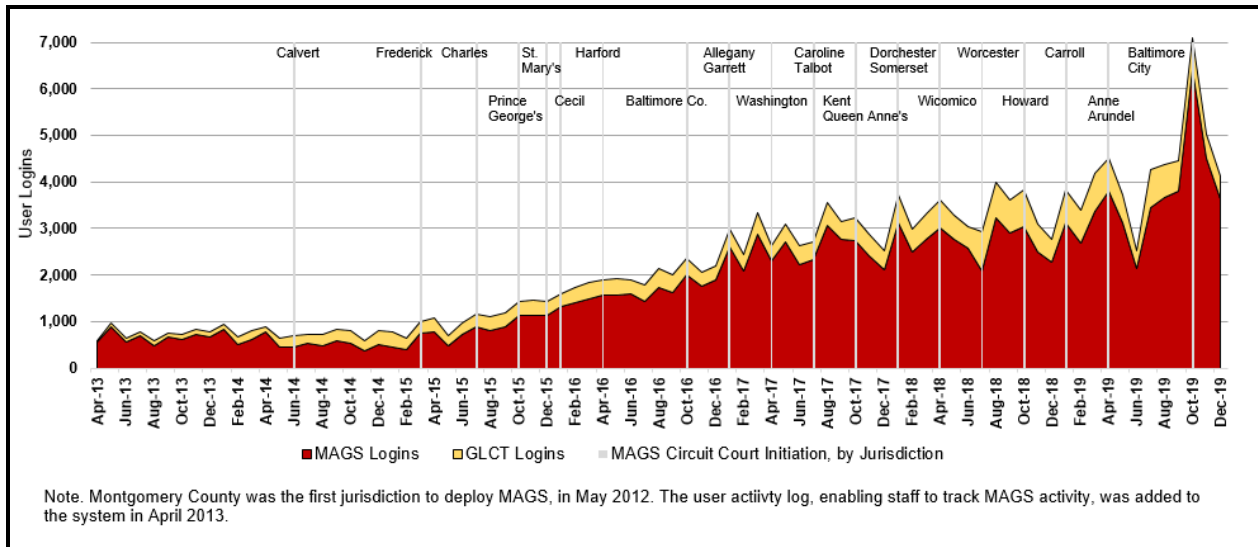
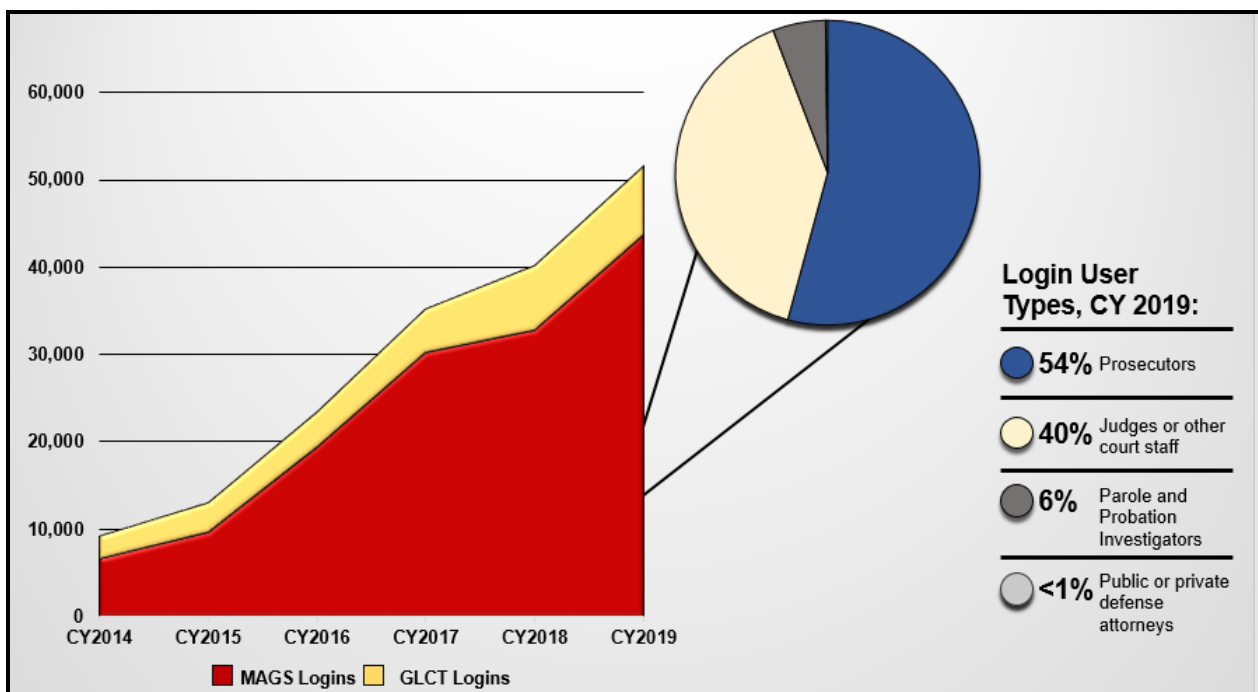
sentencing was a reconsideration or review. Users must now indicate whether the sentencing event involved a sentence reconsideration for a crime of violence (as defined in CR, §14-101), a three-judge panel review, or neither.

- The MSCCSP clarified instructions regarding the application of the multiple victim stacking rule (MVSR) and revised the *Offense/Offense Score* screen to allow the MVSR to be applied in sentencing events involving multiple criminal events.
- The individual and/or overall guidelines range updates automatically on the *List of Offenses* screen after the user edits a relevant part of the worksheet (e.g., components of the offender score), or when a merged/nolle prosequi offense is deleted from the *List of Offenses* screen.
- The race categories on the *Offender Information* screen were modified to mirror those required by SG, § 10-603, and now provide for multiracial responses.
- The *Offender Information* screen was updated to include the Office of the Maryland State Prosecutor as a designated “worksheet preparer” agency.
- For those jurisdictions utilizing the Maryland Electronic Courts system (MDEC) as of July 1, 2019, the Case Number field in MAGS now pre-populates with the MDEC prefix corresponding to the user’s jurisdiction.

**October 1, 2019:** The MSCCSP released an updated version of MAGS (8.0) for immediate use. Once a worksheet has been submitted in MAGS, a SUBMITTED stamp along with the date of submission appears now in the lower right corner of the worksheet PDF. This notation was added to the worksheet in response to requests from practitioners to include an indicator signifying that the PDF or hard copy of the worksheet is the official version that has also been electronically submitted.

**October 1, 2019:** The Baltimore City Circuit Court began use of MAGS to initiate, edit, and submit all official sentencing guidelines worksheets.

In calendar year 2019, there were approximately 44,000 MAGS user logins, an increase of 33% from calendar year 2018 (see Figure 1 and Figure 2). The majority (94%) of the user logins originated from either the prosecutors or the circuit courts. Additionally, the GLCT was accessed approximately 7,800 times in calendar year 2019, a five percent increase from calendar year 2018.

**Figure 1. MAGS and GLCT User Logins, April 2013 through December 2019****Figure 2. MAGS User Logins, by User Type, Calendar Years 2014 through 2019**

The GLCT (see Image 3) 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 of October 1, 2019, all jurisdictions are using MAGS. Therefore, it is expected that use of the GLCT will decrease in the coming year. Figure 1, however, indicates that users still utilize the automated guidelines calculations and worksheets provided by the GLCT.



**Image 3. Guidelines Calculator Tool (GLCT)**

Last Name: SAMPLE First Name: JOE SID:

Offender Information Offender Score List of Offenses

Maryland Guidelines Calculator Tool Previous

Add Offense

Event #	Count	Offense Description	Guidelines	Case #	Select
1	1	Burglary, 4th degree	6M to 1Y		

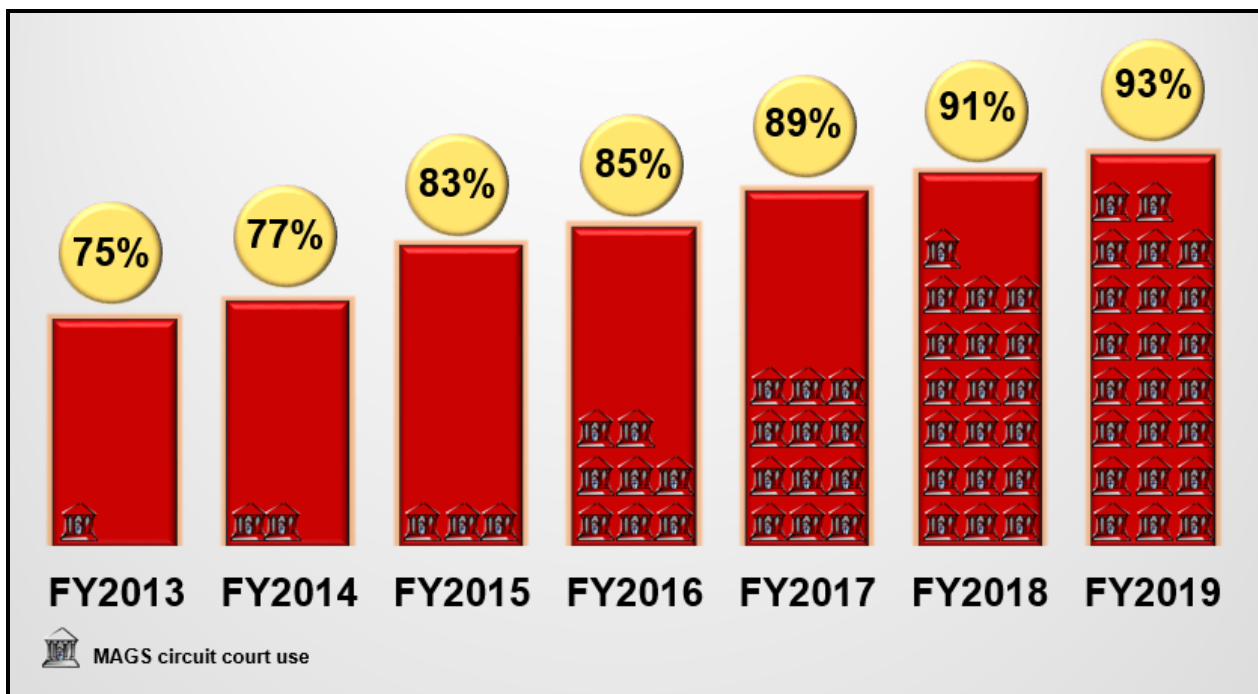
Overall Guidelines Range: 6M To 1Y

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 limited case-level information for all guidelines-eligible cases sentenced in circuit courts during the previous month.<sup>6</sup> The Montgomery County Circuit Court and 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 guidelines worksheets received by the MSCCSP. Using this data, MSCCSP staff calculates worksheet submission rates for each jurisdiction. Each jurisdiction using MAGS receives 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. The status reports provide worksheet completion updates for the two most recent months. 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 93% in fiscal year 2019 (see Figure 3). The MSCCSP anticipates that, in providing individual jurisdictions with feedback, worksheet submission rates will continue to increase thus improving the completeness and reliability of the MSCCSP's data.

<sup>6</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 2019**



## 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 2019 public comments hearing occurred on December 10. 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 public comments hearing, four individuals testified. The first speaker testified on behalf of the Maryland Alliance for Justice Reform (MAJR). The speaker's testimony addressed the topics of improved education of judges about corrections options and the implementation of risk-needs assessments at sentencing. Executive Director Soulé provided a response in which he described the efforts the MSCCSP has taken in the past to address the issues touched upon in the speaker's testimony. A Maryland resident testified about the felony murder rule and expressed concerns about its fairness and legitimacy. In addition, two Maryland residents testified expressing their concern about the lengthy waiting period after expiration of sentence before an individual convicted of certain non-violent offenses, including controlled dangerous substance violations, may apply for a pardon.

The minutes for the public comments hearing contain a summary of the provided testimonies from all speakers. The minutes will be available on the MSCCSP website after the Commission reviews and approves the minutes at its next meeting, scheduled for May 12, 2020. The MSCCSP values the testimony provided by members of the public, as public participation is essential to creating awareness of sentencing issues.

## SENTENCES REPORTED IN FY 2019

The MSCCSP is responsible for collecting sentencing guidelines worksheets and automating the information to monitor sentencing practice and, as warranted, adopting changes to the sentencing guidelines. 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 incorporated additionally submitted 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 sentencing events where the MSCCSP received a sentencing guidelines worksheet.

### Sentencing Guidelines Worksheets Received

In fiscal year 2019, the MSCCSP received sentencing guidelines worksheets for 11,005 sentencing events.<sup>7</sup> More than two-thirds of the worksheets (70.5%) were submitted electronically using MAGS.<sup>8</sup> The remaining 29.5% of worksheets were submitted by mail or email to the MSCCSP office. The second and third columns of Table 6 illustrate the number and percentage of sentencing guidelines worksheets submitted in fiscal year 2019 by judicial circuit. Image 4 identifies the individual jurisdictions in each judicial circuit. The Eighth Circuit (Baltimore City) submitted the largest number of sentencing guidelines worksheets (2,358), while the Fourth Circuit (Allegany, Garrett, and Washington Counties) submitted the fewest (536).

In fiscal year 2019, the MSCCSP staff, in combination with staff at the AOC, the Montgomery County Circuit Court, and the Prince George's County Circuit Court, identified 12,689 guidelines-eligible cases and received a paper worksheet or MAGS submission for 11,827 (93.2%) of the guidelines-eligible cases.<sup>9</sup> The sixth column of Table 6 indicates the percentage

<sup>7</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>8</sup> Twenty of the 24 jurisdictions utilized MAGS for the entirety of fiscal year 2019. Howard County deployed MAGS three months into the fiscal year on October 1, 2018. Carroll County deployed MAGS halfway through the fiscal year on January 1, 2019. Anne Arundel County deployed MAGS nine months into the fiscal year on April 8, 2019.

<sup>9</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,

of guidelines-eligible cases with a submitted worksheet in fiscal year 2019 by judicial circuit. Worksheet submission rates ranged from 88.5% to 99.8% 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, the number of criminal sentencings has fluctuated, while worksheet submission rates increased, each year since implementation of MAGS. The MSCCSP anticipates that worksheet submission rates will continue to increase as the final jurisdiction, Baltimore City, implemented MAGS in October 2019.

**Table 6. Number and Percentage of Sentencing Guidelines Worksheets and Cases Submitted by Circuit, Fiscal Year 2019**

<b>Circuit</b>	<b>Number of Worksheets Submitted</b>	<b>Percent of Total Worksheets Submitted</b>	<b>Number of Guidelines-Eligible Cases Submitted<sup>9</sup></b>	<b>Total Number of Guidelines-Eligible Cases<sup>9</sup></b>	<b>Percent of Guidelines-Eligible Cases with Submitted Worksheet<sup>10</sup></b>
1	807	7.3%	1,039	1,043	99.6%
2	616	5.6%	651	656	99.2%
3	1,978	18.0%	2,042	2,225	91.8%
4	536	4.9%	579	586	98.8%
5 <sup>11</sup>	1,407	12.8%	1,464	1,590	92.1%
6	1,433	13.0%	1,505	1,508	99.8%
7	1,870	17.0%	1,957	2,154	90.9%
8 <sup>12</sup>	2,358	21.4%	2,590	2,927	88.5%
<b>TOTAL</b>	<b>11,005</b>	<b>100.0%</b>	<b>11,827</b>	<b>12,689</b>	<b>93.2%</b>

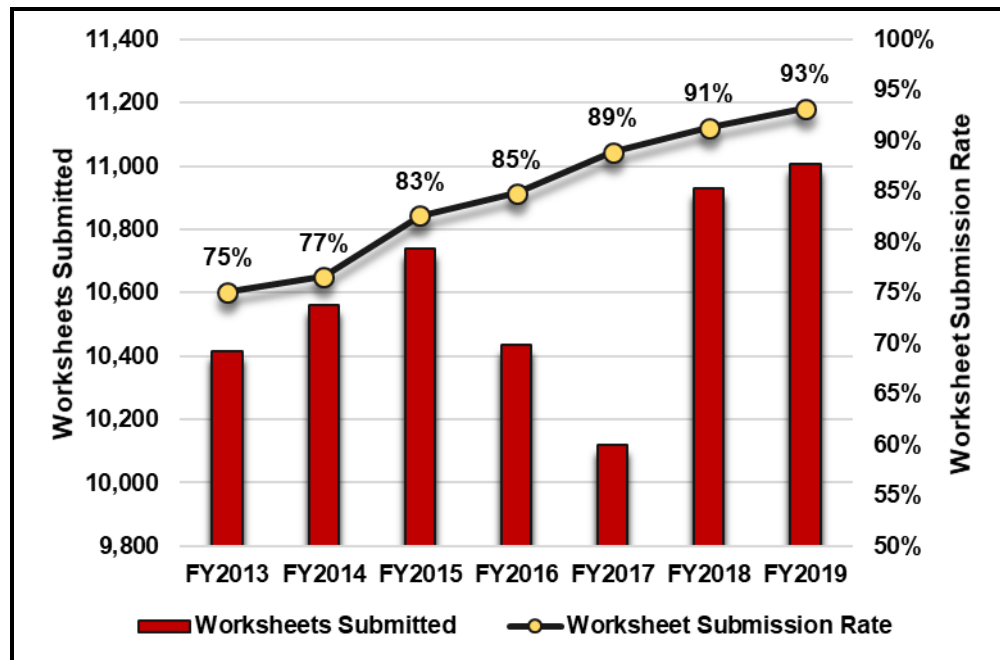
the number of guidelines-eligible cases received is greater than the total number of worksheets received in fiscal year 2019.

<sup>10</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).

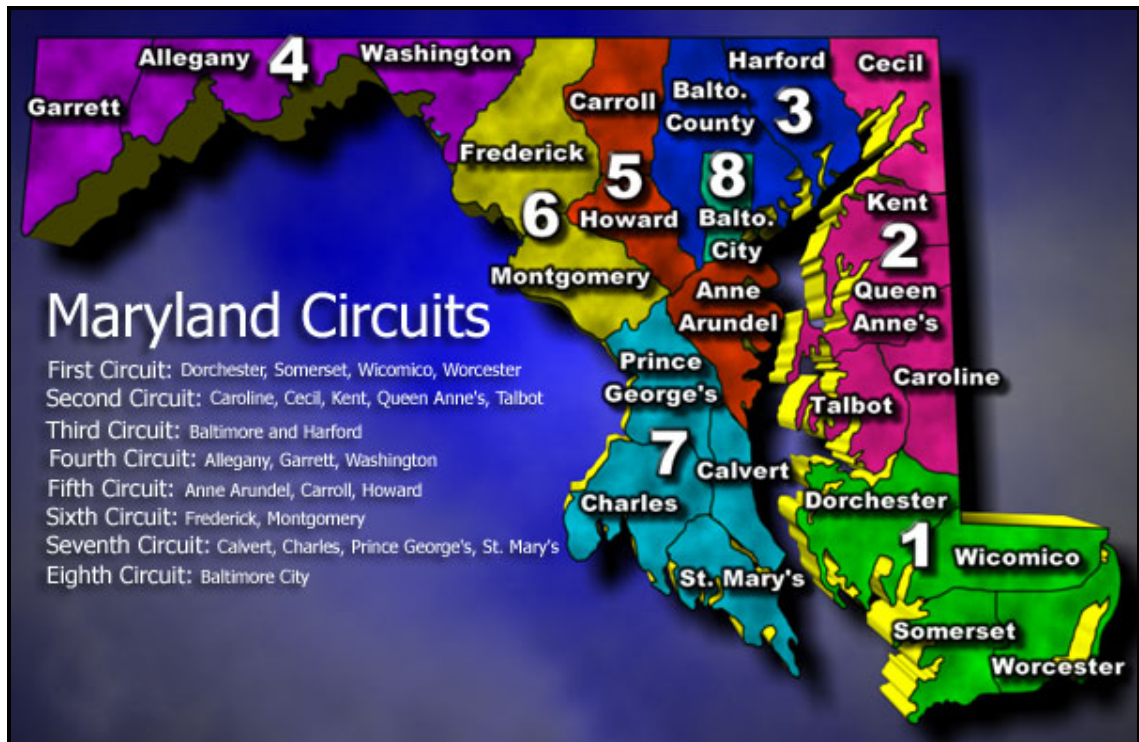
<sup>11</sup> MAGS was deployed for a portion of the specified report year (FY 2019) in the circuit courts of this judicial circuit. See Appendix F for specific deployment dates.

<sup>12</sup> MAGS was not yet deployed in the circuit court of this judicial circuit during the specified reporting period (FY 2019).

**Figure 4. Number and Percentage of Sentencing Guidelines Worksheets Submitted by Fiscal Year, Fiscal Years 2013 through 2019**



**Image 4. Maryland Judicial Circuits**

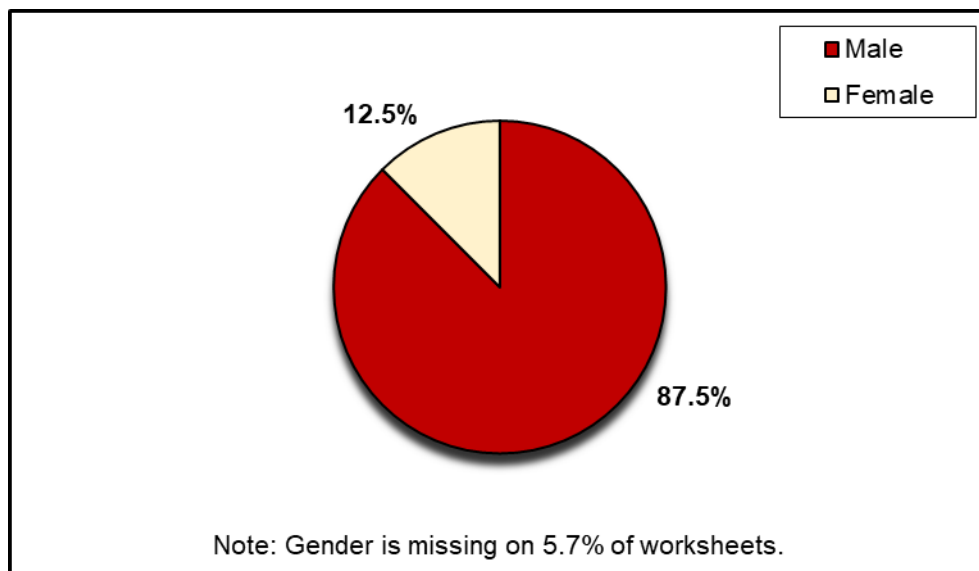


Source: <http://www.courts.state.md.us/clerks/circuitmap2.jpg> (extracted December 2010)

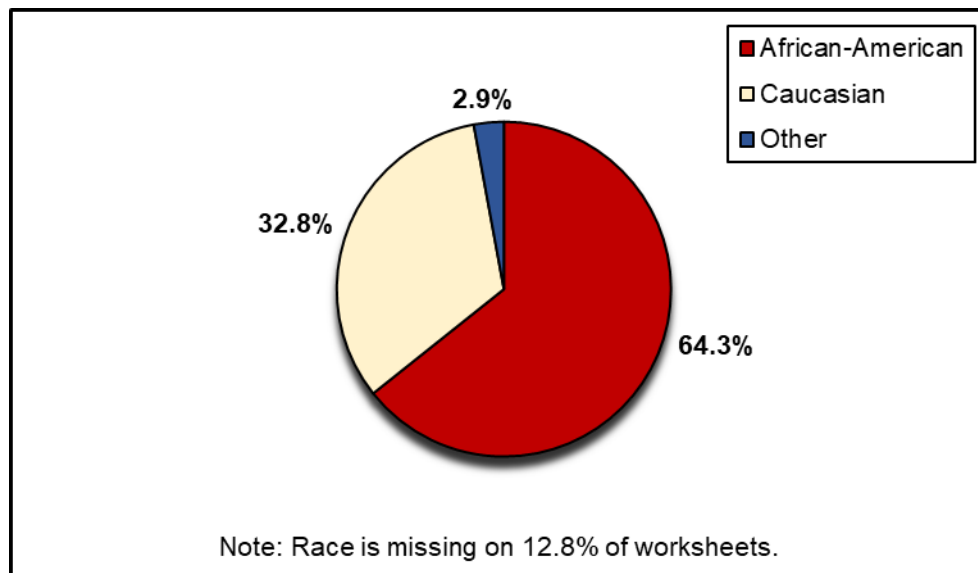
## Guidelines Sentencing Event Characteristics

Figures 5 through 8 summarize the descriptive characteristics from the 11,005 sentencing guidelines worksheets submitted for offenders sentenced in fiscal year 2019. Most offenders were male (87.5%) and African-American (64.3%). Fewer than 10% were of Hispanic or Latino origin. The median age of offenders at the date of the offense was 28 years. The youngest offender was 13, while the oldest was 82 years of age. Approximately 2% of offenders were under 18 years of age; 24% were 18-22 years old; 33% were 23-30 years old; 23% were 31-40 years old; and the remaining 18% were 41 years or older.

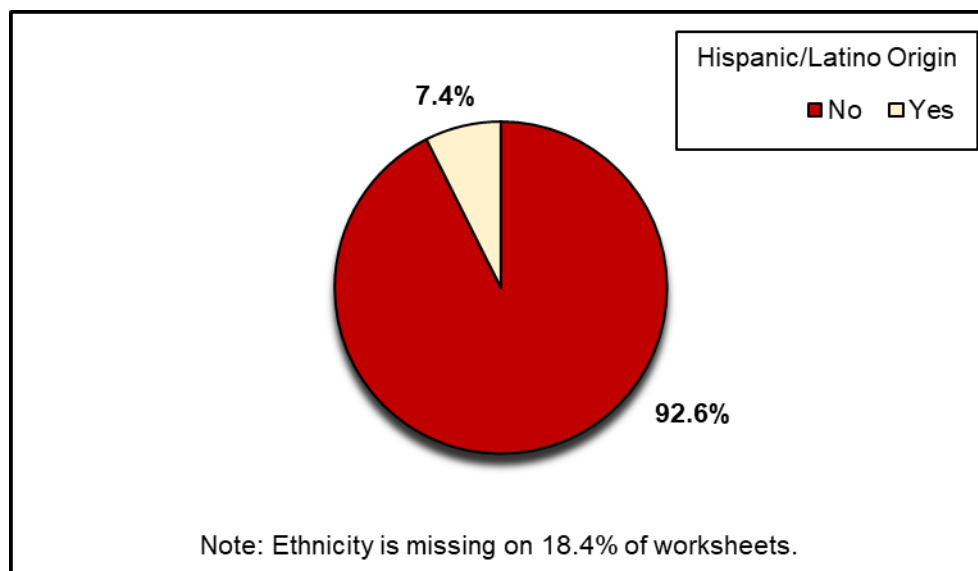
**Figure 5. Distribution of Guidelines Sentencing Events by Gender of Offender, Fiscal Year 2019**



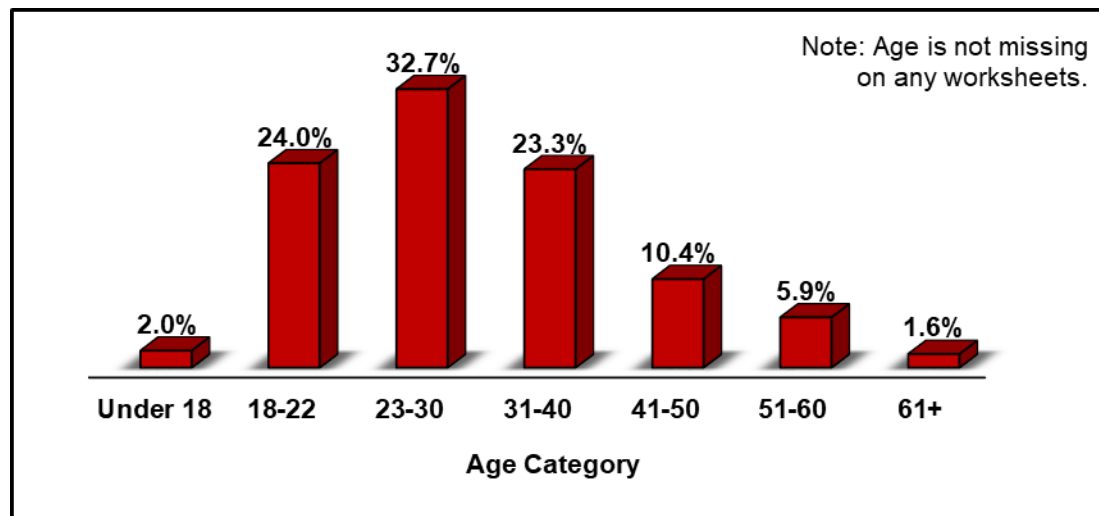
**Figure 6. Distribution of Guidelines Sentencing Events by Race of Offender, Fiscal Year 2019**



**Figure 7. Distribution of Guidelines Sentencing Events by Ethnicity of Offender, Fiscal Year 2019**



**Figure 8. Distribution of Guidelines Sentencing Events by Age of Offender, Fiscal Year 2019**



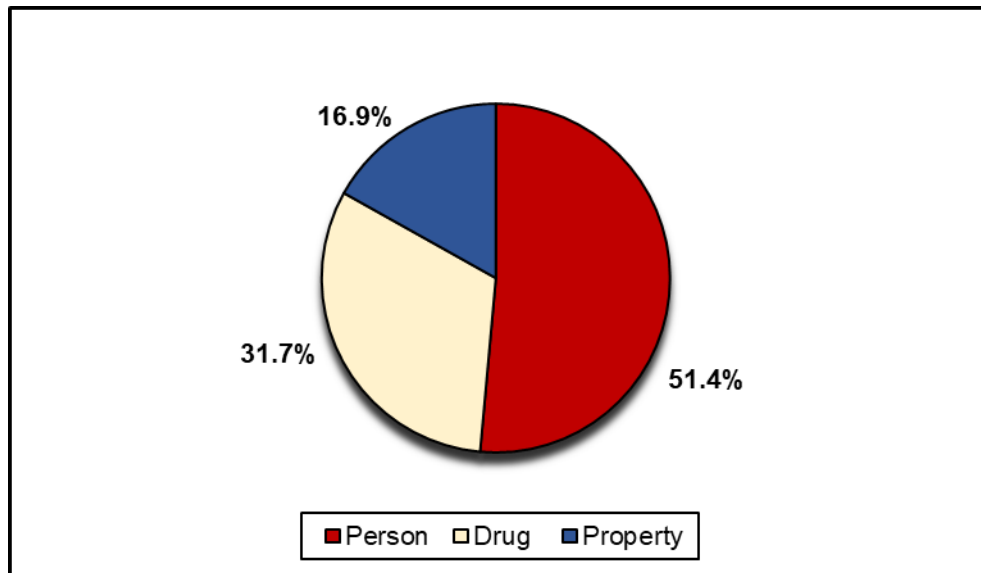
Figures 9 through 13 and Tables 7 through 8 show the distribution of guidelines sentencing events by crime category, seriousness category, components of the offender score, components of the offense score, disposition type, and sentence type. Note that the total number of sentencing events from which the figures and corresponding percentages derive excludes reconsiderations and three-judge panel reviews (N=45).

Figure 9 provides a breakdown of guidelines sentencing events by crime category. For sentencing events involving multiple offenses, the figure considers only the most serious offense. Sentencing events involving a person offense were most common (51.4%), followed by those involving a drug offense (31.7%). In 16.9% of sentencing events, the most serious offense was a property crime. The distribution of sentencing events by crime category was similar when limiting the analysis to defendants sentenced to incarceration (55.9% person, 28.6% drug, 15.5% property).<sup>13</sup>

<sup>13</sup> Incarceration includes home detention and credited time, as well as post-sentence jail/prison time.



**Figure 9. Distribution of Guidelines Sentencing Events by Crime Category, Fiscal Year 2019**



Figures 10a, 10b, and 10c display the distribution of guidelines offenses by offense seriousness category for each of the three crime categories. Among person offenses, offenses with a seriousness category V were most common (34.5%), followed by offenses with a seriousness category III (20.9%). *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 10a. Distribution of Person Offenses by Seriousness Category, Fiscal Year 2019**

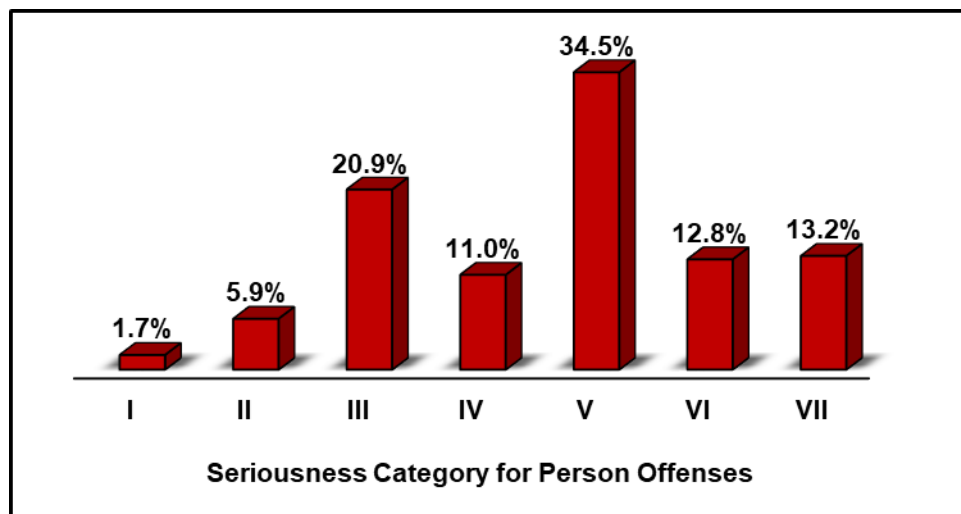


Figure 10b summarizes the distribution of drug offenses by seriousness category. Drug offenses with seriousness categories IIIB (50.2%), IV (24.9%), and VII (23.5%) were most common.

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

**Figure 10b. Distribution of Drug Offenses by Seriousness Category, Fiscal Year 2019**

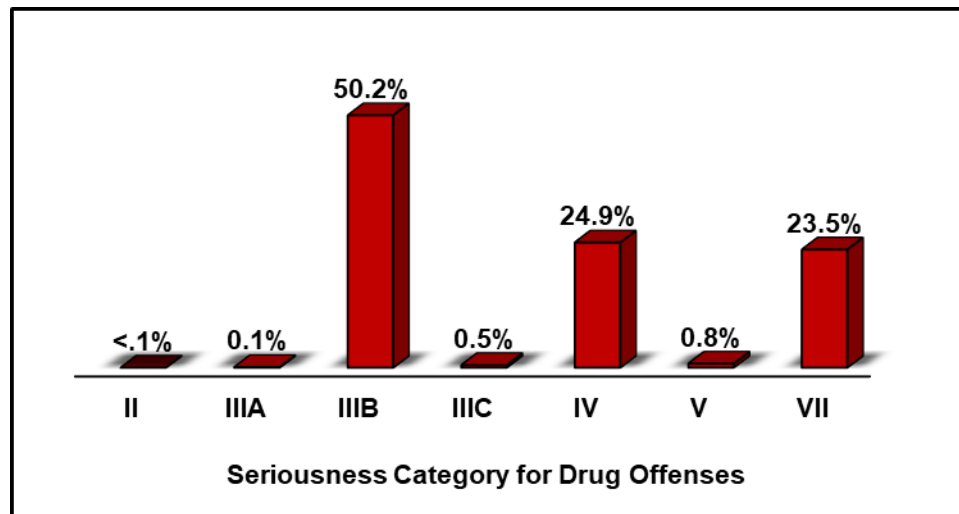


Figure 10c provides the distribution of property offenses by seriousness category. Offenses with a seriousness category II (<.1%) were far less frequent than offenses in the other seriousness categories. The most common property offenses were *first degree burglary* (III), *second degree burglary* (IV), *fourth degree burglary* (VII), and *theft or theft scheme of at least \$1,500 but less than \$25,000* (VI).

**Figure 10c. Distribution of Property Offenses by Seriousness Category, Fiscal Year 2019**

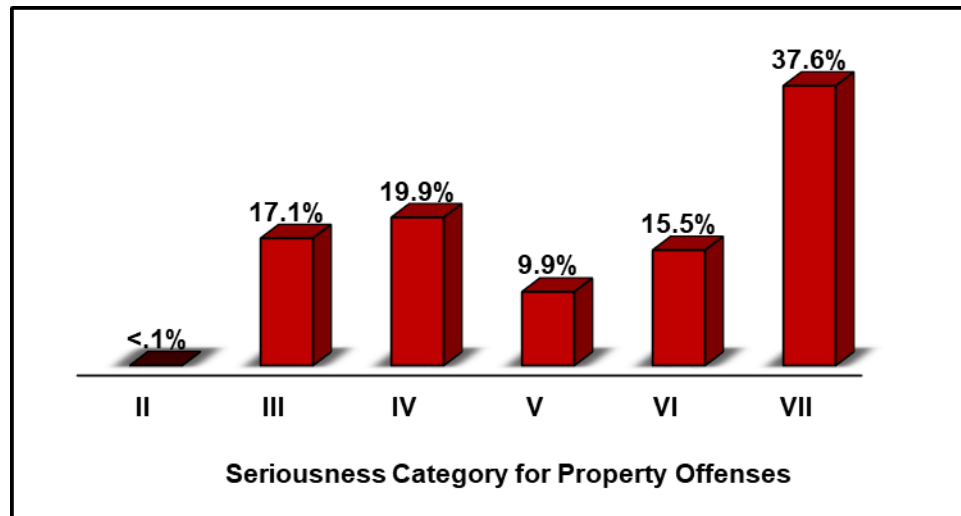


Table 7 shows the distribution of guidelines sentencing events by the four components of the offender score. The offender score provides a measure of the defendant's prior criminal history and ranges from 0 to 9. Table 8 displays the distribution of person offenses by the four components of the offense 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>14</sup>

<sup>14</sup> For a further description of offender and offense scores, see *The Present Sentencing Guidelines* section of this report, starting at page 2.

**Table 7. Distribution of Guidelines Sentencing Events by Offender Score, Fiscal Year 2019**

Offender Score Component		Percent of Offenders
Relationship to CJS When Offense Occurred	0 = None or pending cases	74.6%
	1 = Court or other criminal justice supervision	25.4%
Juvenile Delinquency <sup>15</sup>	0 = 23 years or older <b>or</b> 0 findings of a delinquent act w/in 5 years of the date of the offense	94.3%
	1 = Under 23 years <b>and</b> : 1 or 2 findings of a delinquent act w/in 5 years of the date of the offense	4.0%
	2 = Under 23 years <b>and</b> : 3 or more findings of a delinquent act w/in 5 years of the date of the offense	1.7%
Prior Adult Criminal Record <sup>16</sup>	0 = None	34.0%
	1 = Minor	22.5%
	3 = Moderate	22.0%
	5 = Major	21.5%
Prior Adult Parole/ Probation Violation	0 = No	73.5%
	1 = Yes	26.5%
AVERAGE TOTAL OFFENDER SCORE = 2.55 MEDIAN TOTAL OFFENDER SCORE = 2		

The second column of Table 7 details the point values for each of the components of the offender score. The average offender score in fiscal year 2019 was 2.55. The median or middle score was 2. Nearly one-third (30.5%) of offenders had an offender score of 0, indicating no prior involvement in the criminal justice system. Considering the individual components of the offender score, approximately three-quarters of offenders had no relationship to the criminal

<sup>15</sup> The juvenile delinquency score was revised effective July 1, 2018 at the start of the reporting period (FY 2019) for this report.

<sup>16</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 2.6% of electronic guidelines worksheets in fiscal year 2019.

justice system when the instant offense occurred (74.6%). Similarly, 73.5% 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 approximately one-third of offenders with no record and the remaining offenders divided almost equally among the minor (22.5%), moderate (22%), and major (21.5%) prior adult criminal record categories.

**Table 8. Distribution of Person Offenses by Offense Score, Fiscal Year 2019**

Offense Score Component		Percent of Offenders
Seriousness Category	1 = V – VII	60.2%
	3 = IV	11.2%
	5 = III	20.8%
	8 = II	6.0%
	10 = I	1.8%
Victim Injury	0 = No injury	60.7%
	1 = Injury, non-permanent	29.4%
	2 = Permanent injury or death	9.9%
Weapon Presence	0 = No weapon	40.5%
	1 = Weapon other than firearm	17.7%
	2 = Firearm or explosive	41.8%
Special Victim Vulnerability	0 = No	90.1%
	1 = Yes	9.9%
AVERAGE TOTAL OFFENSE SCORE = 4.24 MEDIAN TOTAL OFFENSE SCORE = 3		

The second column of Table 8 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 2019 was 4.24. The median or middle score was 3. More than half of all person offenses had a seriousness category of V, VI, or VII. Nearly 61% of offenses involved no injury to the victim, although approximately 60% of offenses involved a weapon. Finally, 9.9% 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 11 shows the distribution of guidelines sentencing events by disposition type (Appendix D contains a description of the five major disposition types listed on the sentencing guidelines worksheet). The vast majority of sentencing events were resolved by either an ABA plea agreement<sup>17</sup> (48.5%) or a non-ABA plea agreement (35.4%). An additional 11.2% were resolved by a plea with no agreement, and 5% of sentencing events were resolved by either a bench or jury trial (.7% and 4.3%, respectively).

**Figure 11. Distribution of Guidelines Sentencing Events by Disposition, Fiscal Year 2019**

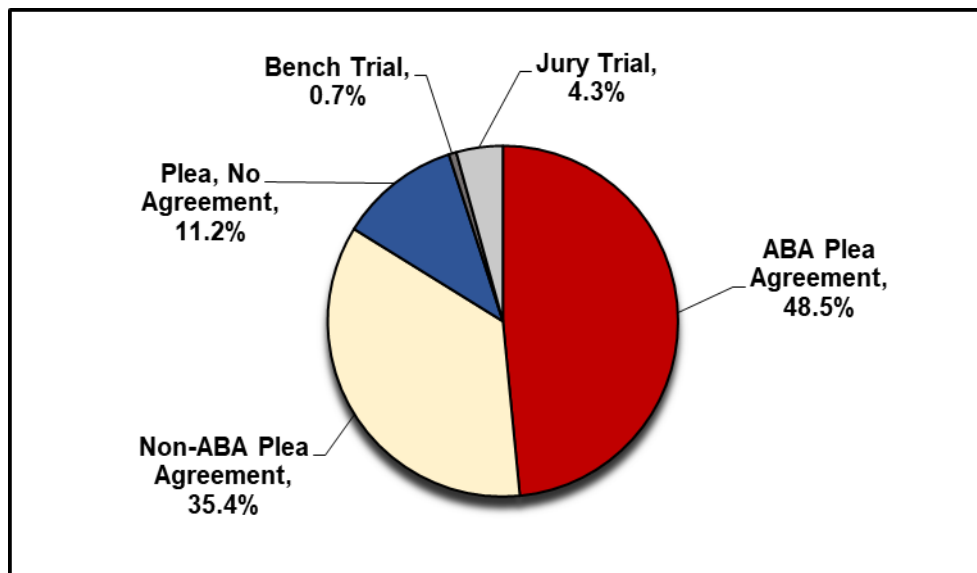
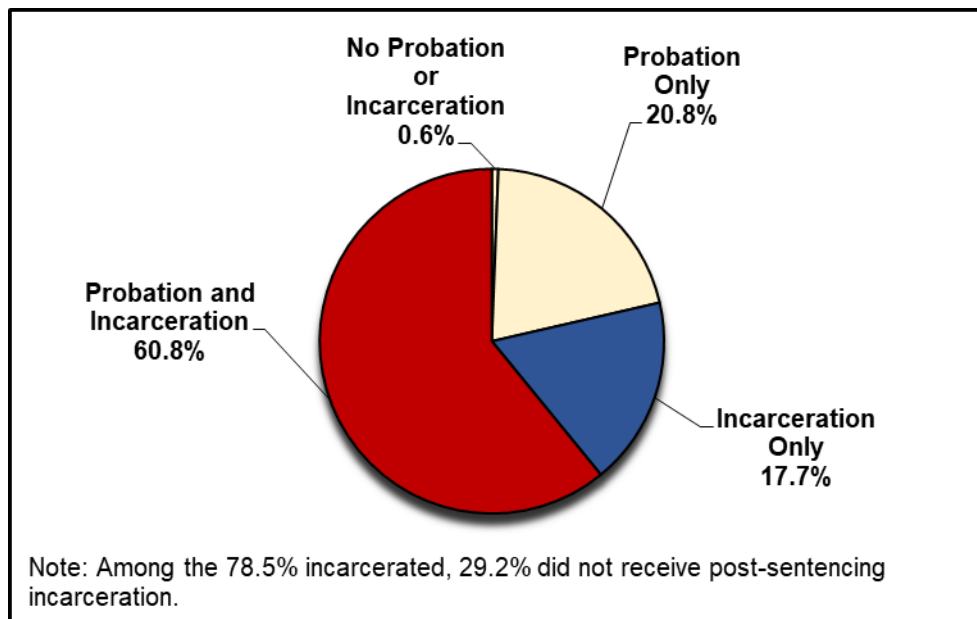


Figure 12 displays the distribution of guidelines sentencing events by sentence type. Note that incarceration includes home detention and credited time, as well as post-sentence jail/prison time. Few offenders (.6%) received a sentence that did not include either incarceration or probation. One-fifth (20.8%) received sentences to probation only. Similarly, 17.7% of offenders received sentences to incarceration only. More than half (60.8%) of all sentencing events resulted in a sentence to both incarceration and probation. Among those incarcerated, 29.2% did not receive post-sentencing incarceration.

<sup>17</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 12. Distribution of Guidelines Sentencing Events by Sentence Type, Fiscal Year 2019**



Figures 13a and 13b provide the percentage of guidelines sentencing events resulting in incarceration and the average (mean and median) sentence length among those incarcerated for the past ten fiscal years (2010-2019), respectively. As in the previous figure, incarceration excludes suspended sentence time and includes jail/prison time, home detention time, and credit for time served (except where noted). For offenders with multiple offenses sentenced together, the figures consider the sentence across all offenses. Figure 13a indicates that the percentage of offenders sentenced to incarceration was highest in the current fiscal year (78.5%) and lowest in fiscal year 2015 (75%). The incarceration rate increased by a little more than 2 percentage points in the past fiscal year from 76.2% to 78.5%. This increase is due at least partly to an increase in the percentage of offenders incarcerated pre-sentence, as the percentage incarcerated post-sentence actually decreased slightly in the past fiscal year from 55.8% to 55.5%.

**Figure 13a. Incarceration Rates for Guidelines Sentencing Events, by Fiscal Year**

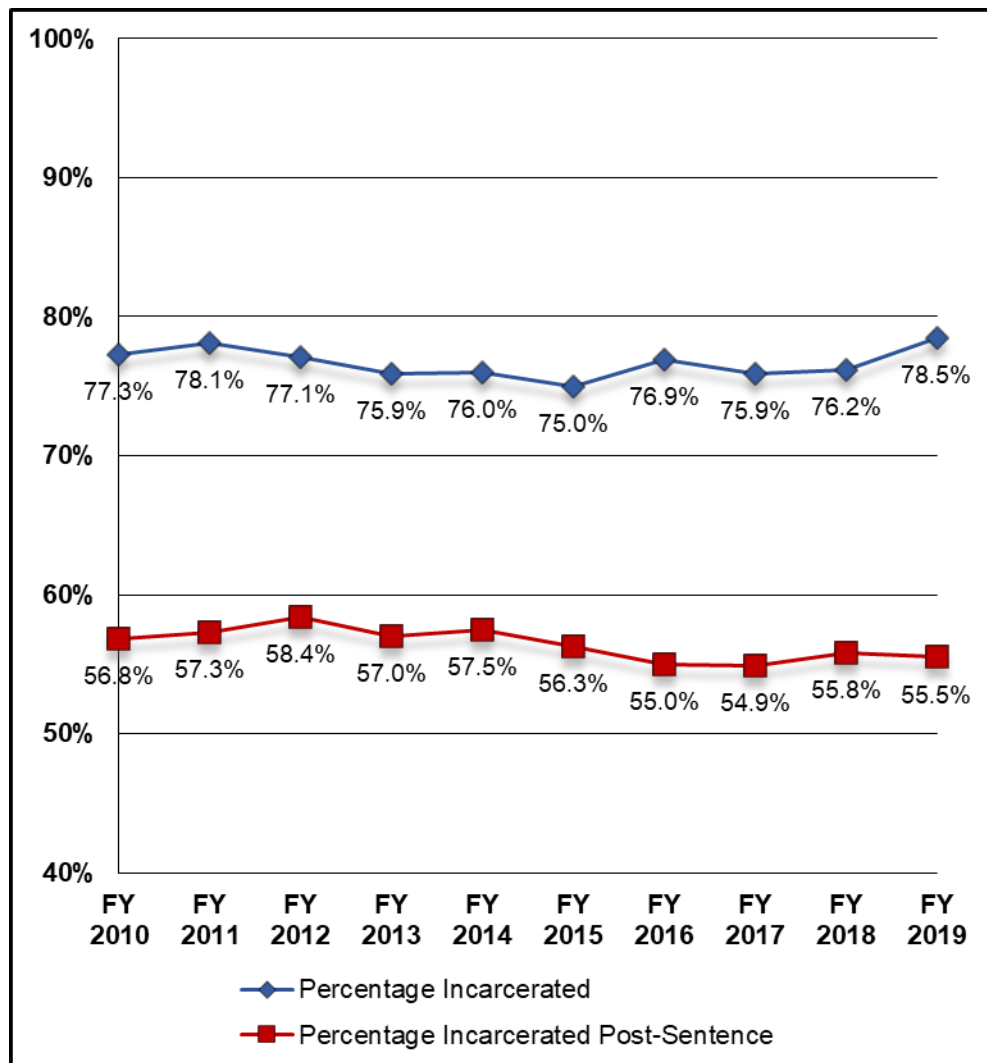
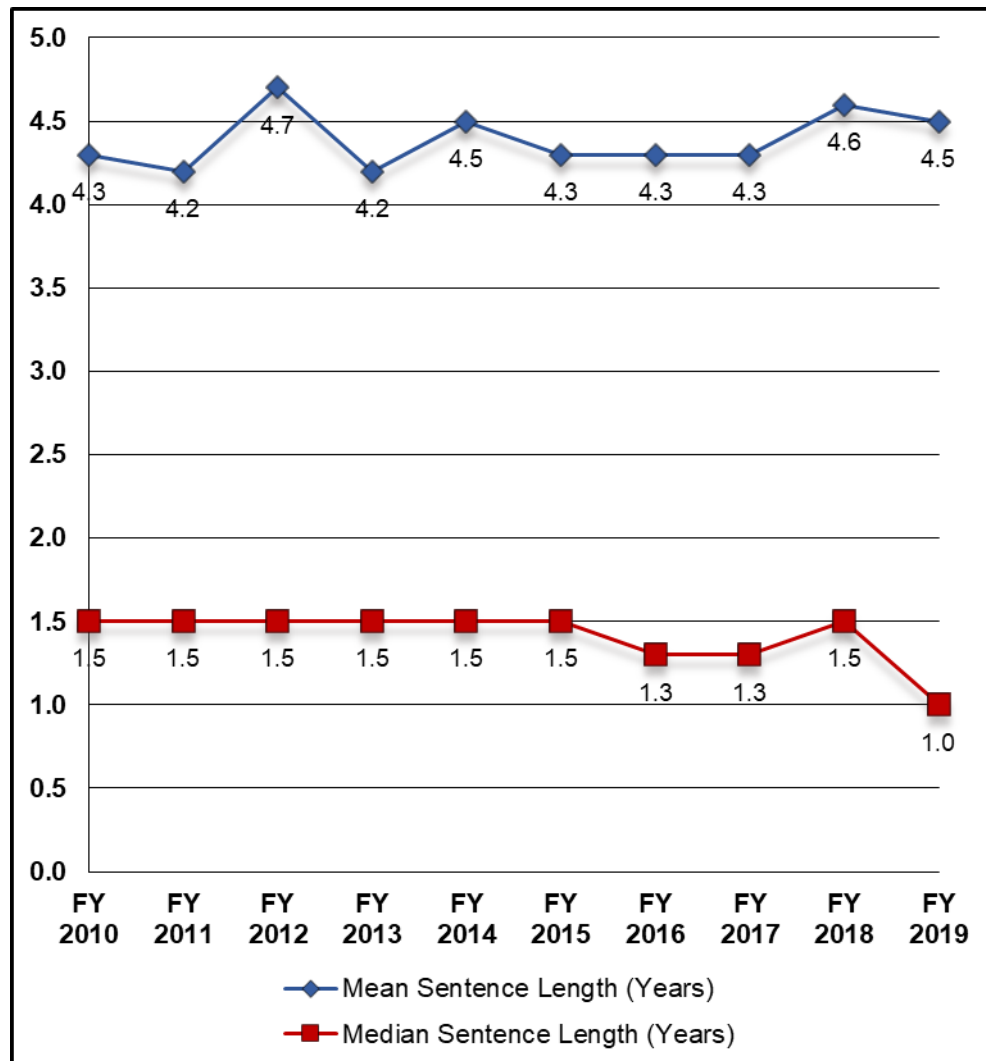




Figure 13b indicates that the typical sentence length among those incarcerated was relatively stable during the ten-year period. The mean (average) sentence ranged from a low of 4.2 years in fiscal years 2011 and 2013 to a high of 4.7 years in fiscal year 2012. Sentence lengths decreased in the past fiscal year from 4.6 years to 4.5 years, with the median (middle) sentence dropping to its lowest point (1 year) in the current fiscal year. 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. Taken together, figures 13a and 13b indicate that while the percentage of offenders incarcerated during the ten-year period reached its highest point in fiscal year 2019, the rate of post-sentence incarceration decreased slightly in the past fiscal year, and sentence lengths as measured by the median (middle) sentence were at their lowest in fiscal year 2019.

**Figure 13b. Length of Sentence for Guidelines Sentencing Events by Fiscal Year**



## JUDICIAL COMPLIANCE WITH MARYLAND'S VOLUNTARY SENTENCING GUIDELINES

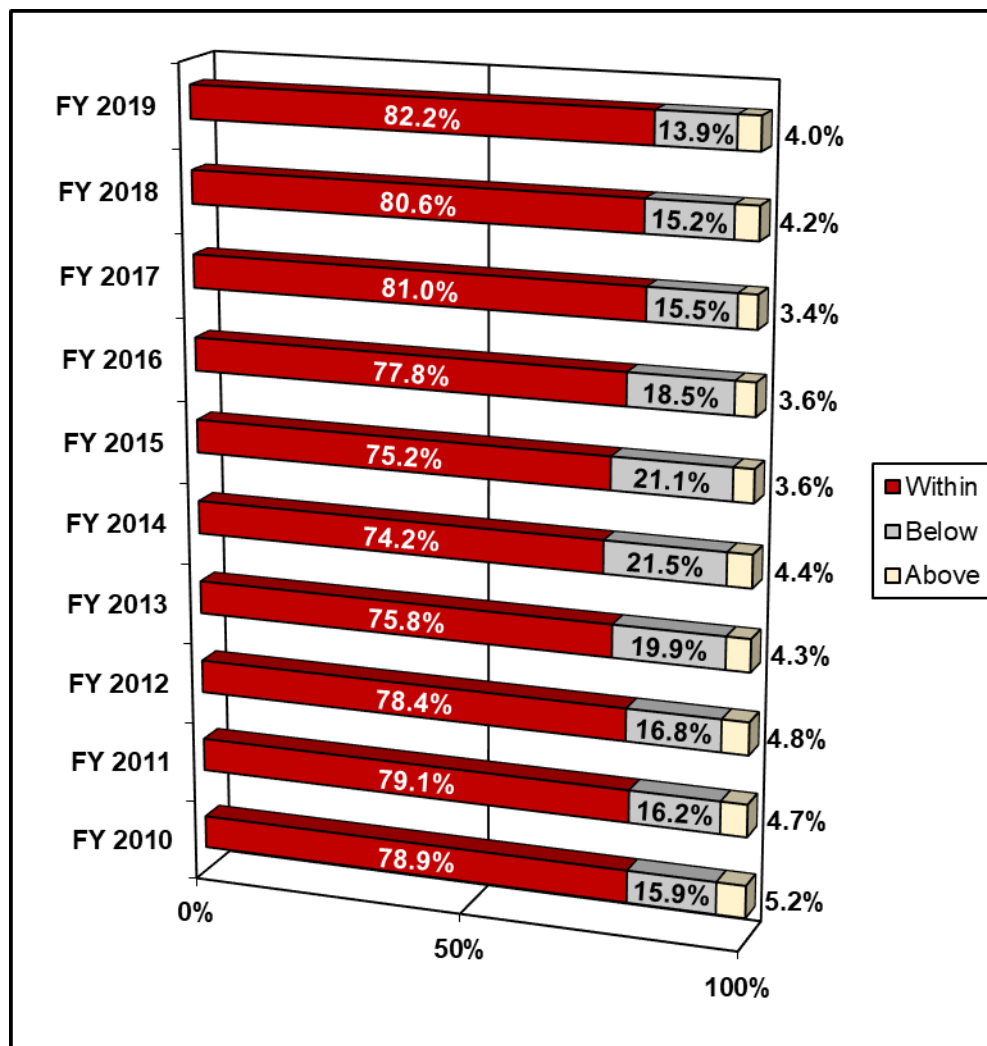
The MSCCSP's governing legislation mandates the Commission to examine judicial compliance based on data extracted from the sentencing guidelines worksheets submitted after circuit courts sentence offenders. The following provides a detailed examination of judicial compliance with Maryland's voluntary 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 sentencing event. 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 sentencing event 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 14 illustrates the overall guidelines compliance rates for the past ten fiscal years (2010-2019). 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 82.2% in fiscal year 2019.

**Figure 14. Overall Sentencing Guidelines Compliance by Fiscal Year  
(All Sentencing Events)**

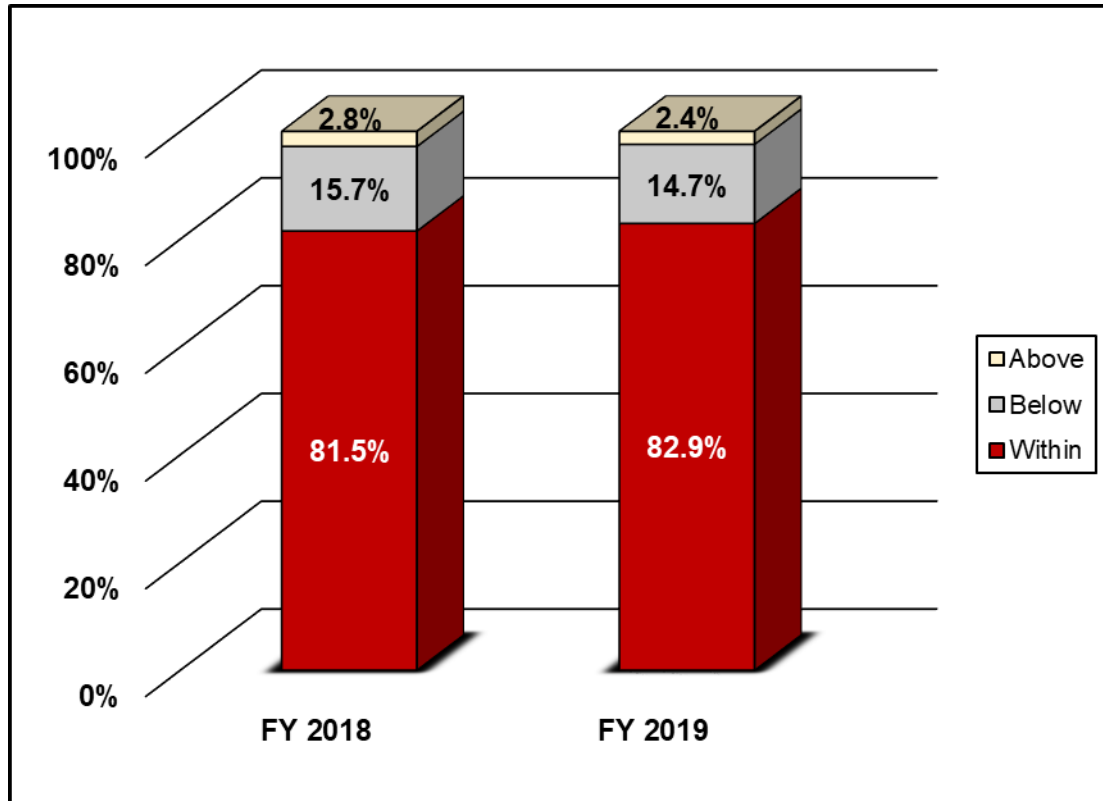


Analyses of judicial compliance in Maryland traditionally focus on sentences for single-count convictions because they permit the most direct comparison of compliance by crime category and by offense type within the applicable cell of the sentencing matrix. Since multiple-count convictions can consist 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 2018 and 2019. Of the 11,005 sentencing guidelines worksheets submitted to the MSCCSP in fiscal year 2019, 8,130 (73.9%) pertained to single-count convictions.

Figure 15 provides the overall guidelines compliance rates for fiscal years 2018 and 2019 based on single-count convictions. The rates are similar to those in Figure 14. In both years, the overall rate of compliance exceeded the Commission's goal of 65% compliance. More than 80%

of sentencing events were compliant in both fiscal years. When departures occurred, they were more often below the guidelines than above.

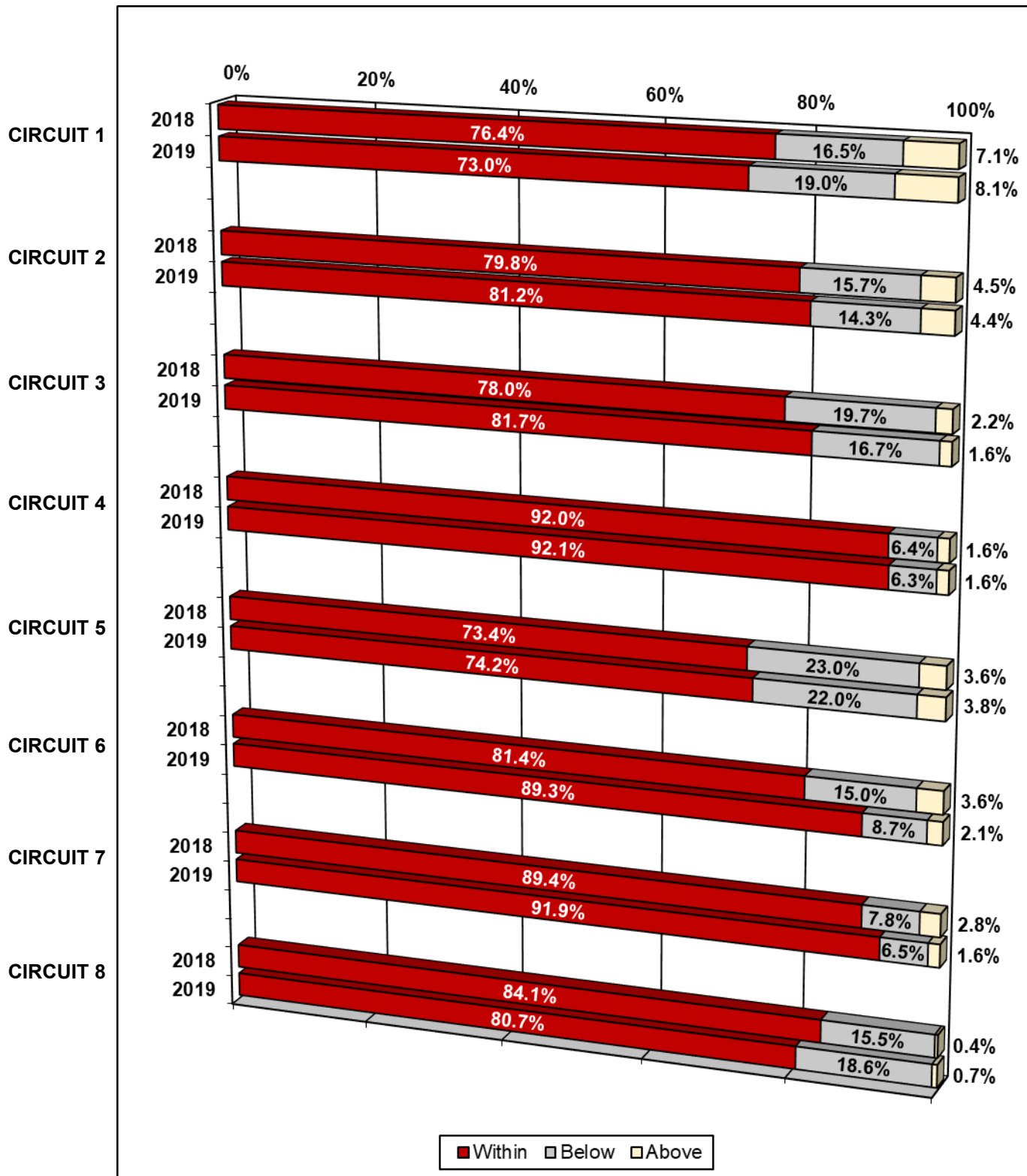
**Figure 15. Overall Sentencing Guidelines Compliance by Fiscal Year  
(Single-Count Convictions)**



### Judicial Compliance Rates by Circuit

As shown in Figure 16, all eight trial court judicial circuits met the 65% compliance benchmark in fiscal year 2019. The Fourth Circuit had the highest compliance rate (92.1%), followed closely by the Seventh Circuit (91.9%). In contrast, compliance was lowest in the First Circuit (73%). The largest change in the compliance rate occurred in the Sixth Circuit, where the rate increased nearly 8 percentage points from 81.4% in fiscal year 2018 to 89.3% in fiscal year 2019. This increase can largely be attributed to an increase in the reported use of ABA pleas.

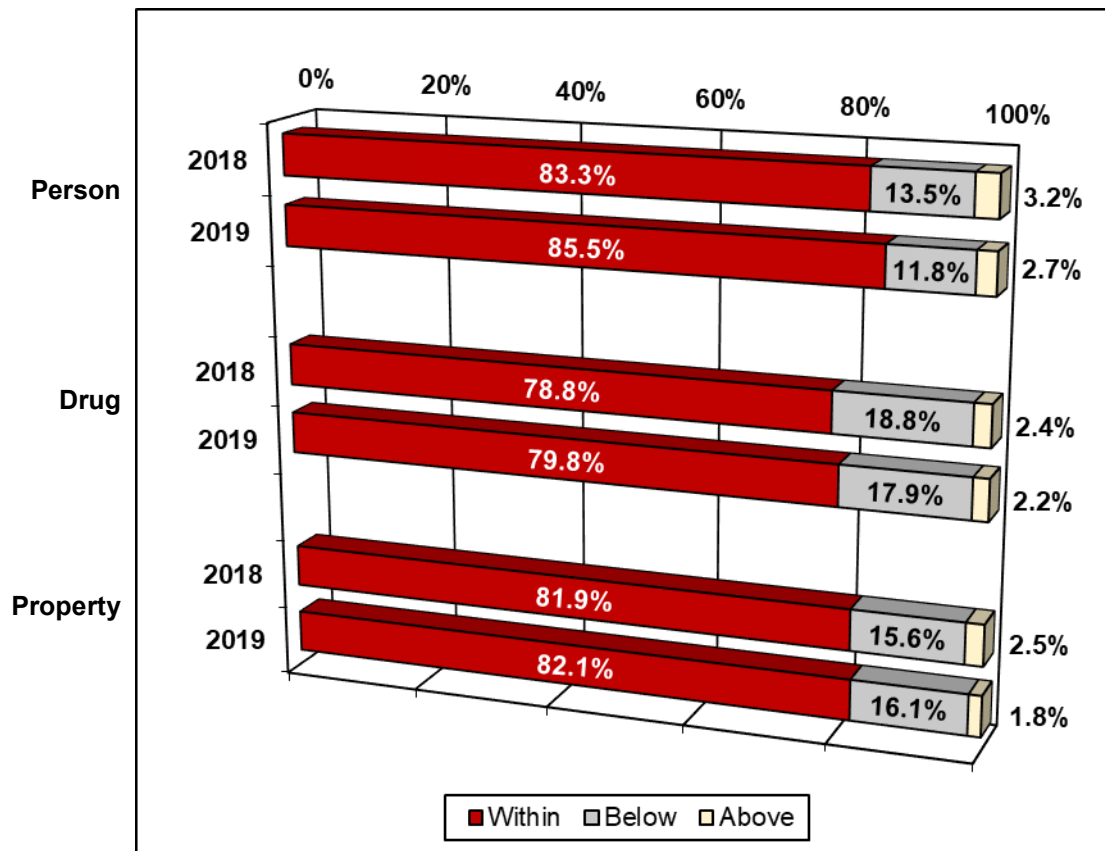
Figure 16. Sentencing Guidelines Compliance by Circuit and Fiscal Year



## Judicial Compliance Rates by Crime Category

Figure 17 shows judicial compliance by crime category for fiscal years 2018 and 2019. Person offenses were the least likely to result in a departure from the guidelines in fiscal year 2019, although differences in compliance rates from one crime category to the next were small. The compliance rate increased slightly from fiscal year 2018 to fiscal year 2019 for each of the crime categories, and the 65% benchmark was met for all three crime categories in both fiscal years.<sup>18</sup>

**Figure 17. Sentencing Guidelines Compliance by Crime Category and Fiscal Year**

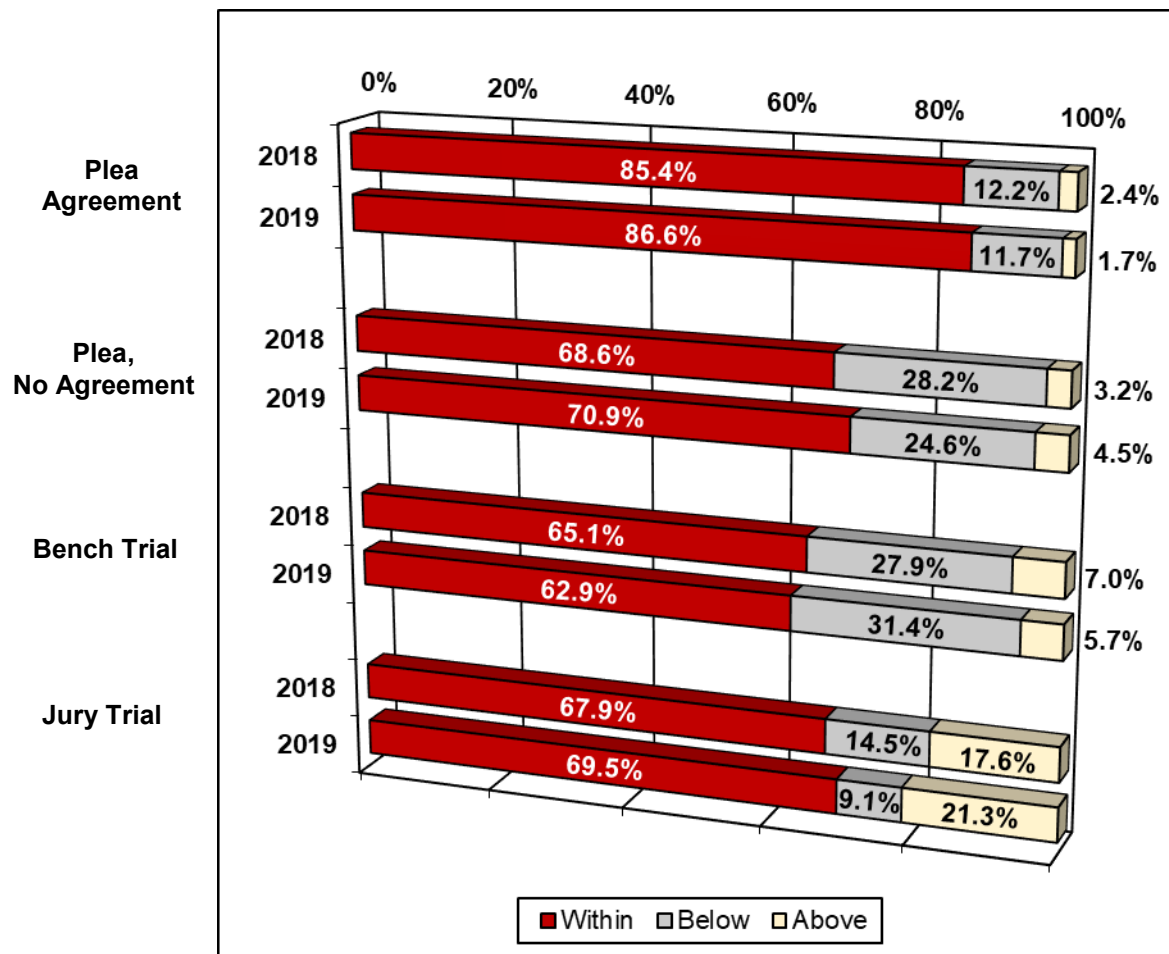


<sup>18</sup> See Appendix C for sentencing guidelines compliance and average sentence for the five most common offenses in each crime category.

## Judicial Compliance Rates by Type of Disposition

Figure 18 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 sentencing events (86.6%) in fiscal year 2019. This is not surprising given that the plea agreement category includes ABA plea agreements, which are compliant by definition. In contrast, sentencing events resolved by a bench trial had the lowest compliance rate (62.9%). Sentencing events resolved by a bench trial also saw the largest percentage of downward departures (31.4%). Finally, jury trials were the only disposition type where upward departures occurred more often than downward departures in fiscal year 2019.

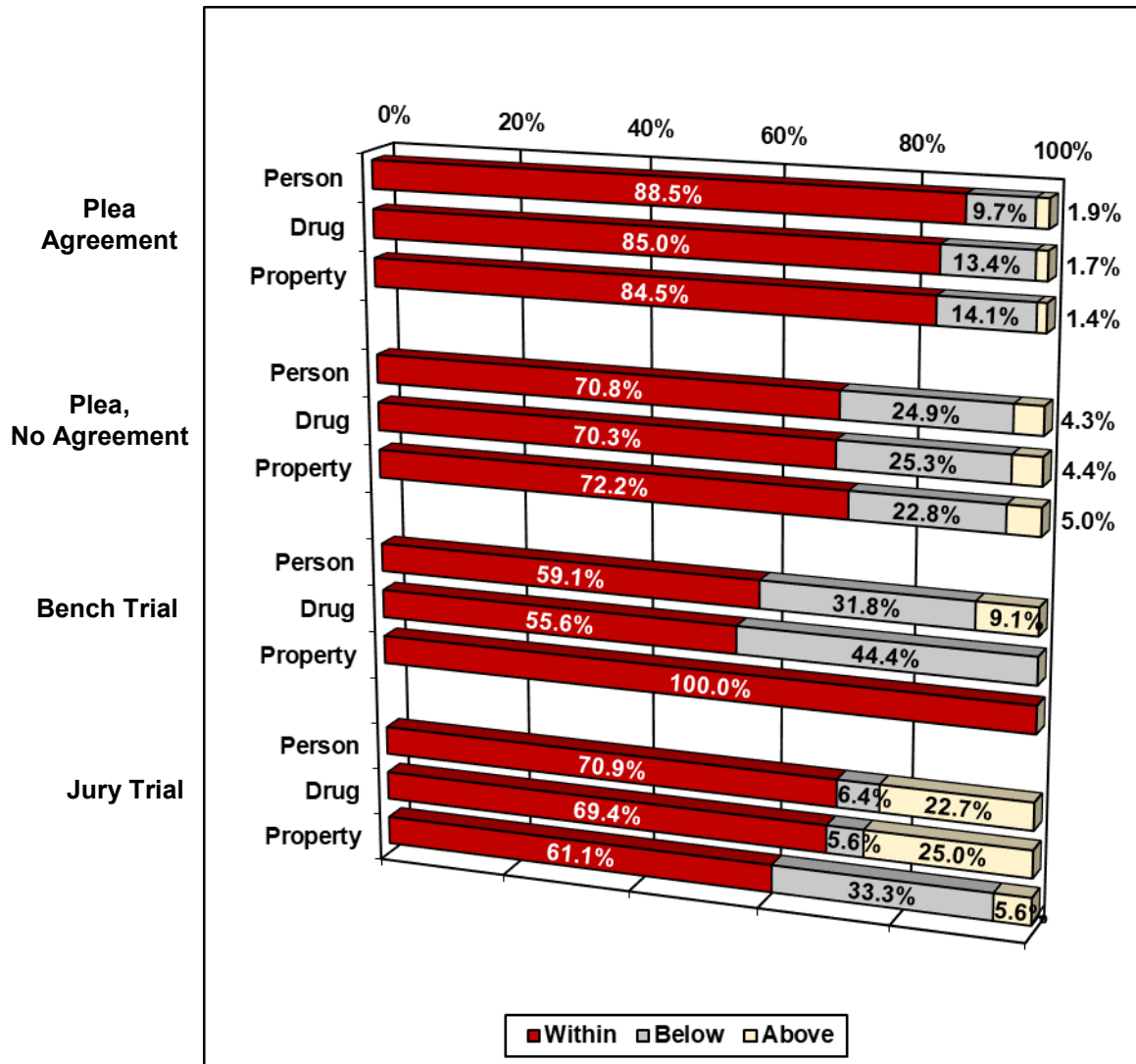
**Figure 18. Sentencing Guidelines Compliance by Type of Disposition and Fiscal Year**



## Judicial Compliance Rates by Crime Category and Disposition

Figure 19 displays compliance rates by crime category and disposition for fiscal year 2019. Some of the rates are based on a very small number of cases. For example, the MSCCSP received only four worksheets in fiscal year 2019 for single-count property offenses adjudicated by a bench trial. Small numbers limit the ability to provide meaningful interpretation.

**Figure 19. Sentencing Guidelines Compliance by Crime Category and Disposition, Fiscal Year 2019**



The highest compliance rate was observed for property offenses adjudicated by a bench trial (100%). Compliance rates fell short of the benchmark of 65% for property offenses resolved by a jury trial (61.1%) and person and drug offenses resolved by a bench trial (59.1% and 55.6%, respectively). Upward departures were most common among drug offenses disposed of by a



jury trial (25%), while downward departures occurred most often among drug offenses disposed of by a bench trial (44.4%).

## 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 common departure reasons and corresponding codes are listed in MAGS as well. The worksheet allows for up to three departure codes and provides a space for the judge to report 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 2019, 1,384 (17.1%) of 8,101 single-count guidelines-eligible sentencing events resulted in a departure from the sentencing guidelines. The reason for departure was provided in 76.6% of these fiscal year 2019 departure cases. This represents a slight increase in reporting from fiscal year 2018 (75.2%). The MSCCSP staff will continue to emphasize the need to include a reason for departure when providing training sessions. Additionally, the statewide deployment of MAGS 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 may help inform the Commission's consideration of potential guidelines revisions.

Tables 9 and 10 display the reasons given for departures from the guidelines in fiscal year 2019. The tables include all of the reasons listed on the reference card as well as the majority of the "other" cited reasons. Table 9 provides a rank order of the mitigating reasons judges provided for sentencing events where the sentence resulted in a downward departure. The first row of the table shows that in 24.9% 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 Division of Parole and Probation; and 3) offender's commitment to substance abuse treatment or other therapeutic program.

**Table 9. Departure Reasons for Sentencing Events Below the Guidelines,  
Fiscal Year 2019<sup>19</sup>**

<b>Mitigating Reasons</b>	<b>Percent of Departures Where Reason is Cited</b>	<b>Valid Percent<sup>20</sup></b>
<i>No Departure Reason Given</i>	24.9%	---
The parties reached a plea agreement that called for a reduced sentence	30.6%	40.8%
Recommendation of State's Attorney or Division of Parole and Probation	21.4%	28.5%
Offender's commitment to substance abuse treatment or other therapeutic program	8.3%	11.1%
Offender made restorative efforts after the offense	5.1%	6.8%
Offender's prior criminal record not significant	4.3%	5.7%
Offender's minor role in the offense	3.8%	5.0%
Offender participating in vocational/life skills training	2.6%	3.5%
Weak facts of the case	2.5%	3.4%
Allow offender to maintain employment	2.4%	3.1%
Judicial discretion	1.8%	2.5%
Offender's age/health	1.6%	2.1%
Victim's participation in the offense lessens the offender's culpability	1.6%	2.1%
Offender had diminished capability for judgment	1.3%	1.8%
Offender already serving sentence in another case	0.8%	1.0%
Offender completing community service	0.8%	1.0%
Offender was influenced by coercion or duress	0.8%	1.0%
Offender expressed remorse	0.6%	0.8%
Victim requested a more lenient sentence	0.5%	0.7%
Offender cooperated with authorities	0.3%	0.4%
Victim unavailable or not willing to cooperate	0.2%	0.2%
Other reason (not specified above)	4.7%	6.3%

Table 10 provides a rank order of the aggravating reasons judges provided for sentencing events where the sentence resulted in an upward departure. The first row of the table shows

<sup>19</sup> Each sentencing event may cite multiple reasons.

<sup>20</sup> Valid percent based on the number of sentencing events below the guidelines with reason cited.

that in 14% 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 level of harm was excessive; and 3) offender's major role in the offense.

**Table 10. Departure Reasons for Sentencing Events Above the Guidelines, Fiscal Year 2019<sup>21</sup>**

<b>Aggravating Reasons</b>	<b>Percent of Departures Where Reason is Cited</b>	<b>Valid Percent<sup>22</sup></b>
<i>No Departure Reason Given</i>	14%	---
Recommendation of State's Attorney or Division of Parole and Probation	47.2%	54.8%
The level of harm was excessive	14.0%	16.3%
Offender's major role in the offense	11.9%	13.9%
Special circumstances of the victim	9.8%	11.4%
The vicious or heinous nature of the conduct	9.8%	11.4%
Offender exploited a position of trust	9.3%	10.8%
Offender's significant participation in major controlled substance offense	8.8%	10.2%
Judicial discretion	2.6%	3.0%
Offender's prior criminal record significant	2.1%	2.4%
Facts of case suggest offender likely guilty of more serious offense	1.6%	1.8%
The parties reached a plea agreement	1.0%	1.2%
Offender committed a "white collar" offense	1.0%	1.2%
Repeat offender	0.5%	0.6%
Offender's lack of remorse	0.5%	0.6%
Other reason (not specified above)	5.7%	6.6%

<sup>21</sup> Each sentencing event may cite multiple reasons.

<sup>22</sup> Valid percent based on the number of sentencing events 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>23</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 11 reviews reconsidered sentences reported to the MSCCSP for crimes of violence as defined in CR, § 14-101 for fiscal year 2019 by judicial circuit. Reconsidered sentences were reported for twenty-nine offenders and sixty-seven 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 2019.

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<sup>23</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 11. Reconsiderations for Crimes of Violence (CR, § 14-101), Fiscal Year 2019<sup>24</sup>**

<b>Circuit</b>	<b>Offense</b>	<b>N</b>
SECOND	Child Abuse, Sexual	1
	Murder, 2 <sup>nd</sup> Degree, Attempted	1
	Robbery	1
THIRD	Assault, 1 <sup>st</sup> Degree	1
	Robbery	2
FOURTH	Assault, 1 <sup>st</sup> Degree	1
	Robbery with Dangerous Weapon	3
FIFTH	Assault, 1 <sup>st</sup> Degree	2
SIXTH	Armed Carjacking	2
	Assault, 1 <sup>st</sup> Degree	3
	Firearm Use in Felony or Crime of Violence	6
	Murder, 1 <sup>st</sup> Degree, Attempted	1
	Rape, 1 <sup>st</sup> Degree	2
	Robbery	2
	Robbery with Dangerous Weapon	23
	Sex offense, 1 <sup>st</sup> Degree	5
SEVENTH	Assault, 1 <sup>st</sup> Degree	1
	Firearm Use in Felony or Crime of Violence	3
	Robbery	1
	Robbery with Dangerous Weapon	3
	Unarmed Carjacking	1
EIGHTH	Firearm Use in Felony or Crime of Violence	1
	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>25</sup> In fiscal year 2019, sentencing guidelines worksheets reported 1,071 sentences for theft, fraud, and related crimes. In 631 (58.9%) of these sentences, an actual dollar amount to indicate the economic loss to the victim was recorded. Unknown amount was marked for 349 (32.6%) of

<sup>24</sup> Table 11 identifies reconsidered sentences for 29 offenders and 67 offenses.

<sup>25</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)).

1,071 theft and fraud related offenses, and the field was left blank for the remaining 8.5% of sentences. Statewide deployment of MAGS should help facilitate the collection of this information, 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 \$6,789,037. The mean (average) amount of loss was \$32,281, while the median (middle) amount of loss was \$1,000. 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. *Felony theft or theft scheme, at least \$1,500 but less than \$25,000* (CR, § 7-104) was the most common offense in which the amount of economic loss was reported on the sentencing guidelines worksheet.

## Victim Information

The sentencing guidelines worksheet includes multiple victim-related items to describe the role of victims at sentencing and to ascertain 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 20 through 22 detail the responses to these items in fiscal year 2019. 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 45% of worksheets, and nearly 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 20 indicates that victim-related court costs were imposed in 42.4% of sentencing events. 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 20. Distribution of Guidelines Sentencing Events by Whether Victim-Related Court Costs Imposed, Fiscal Year 2019**

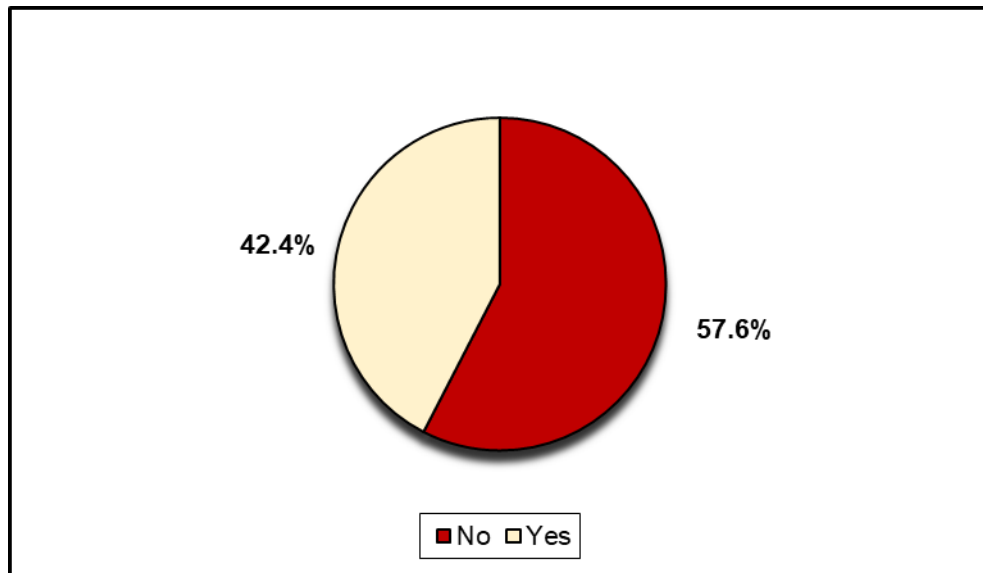
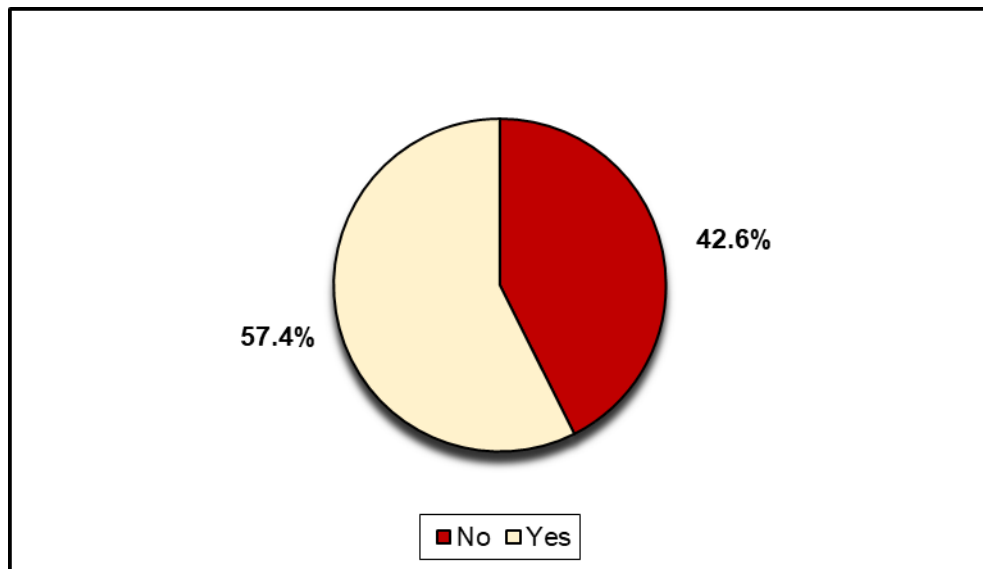


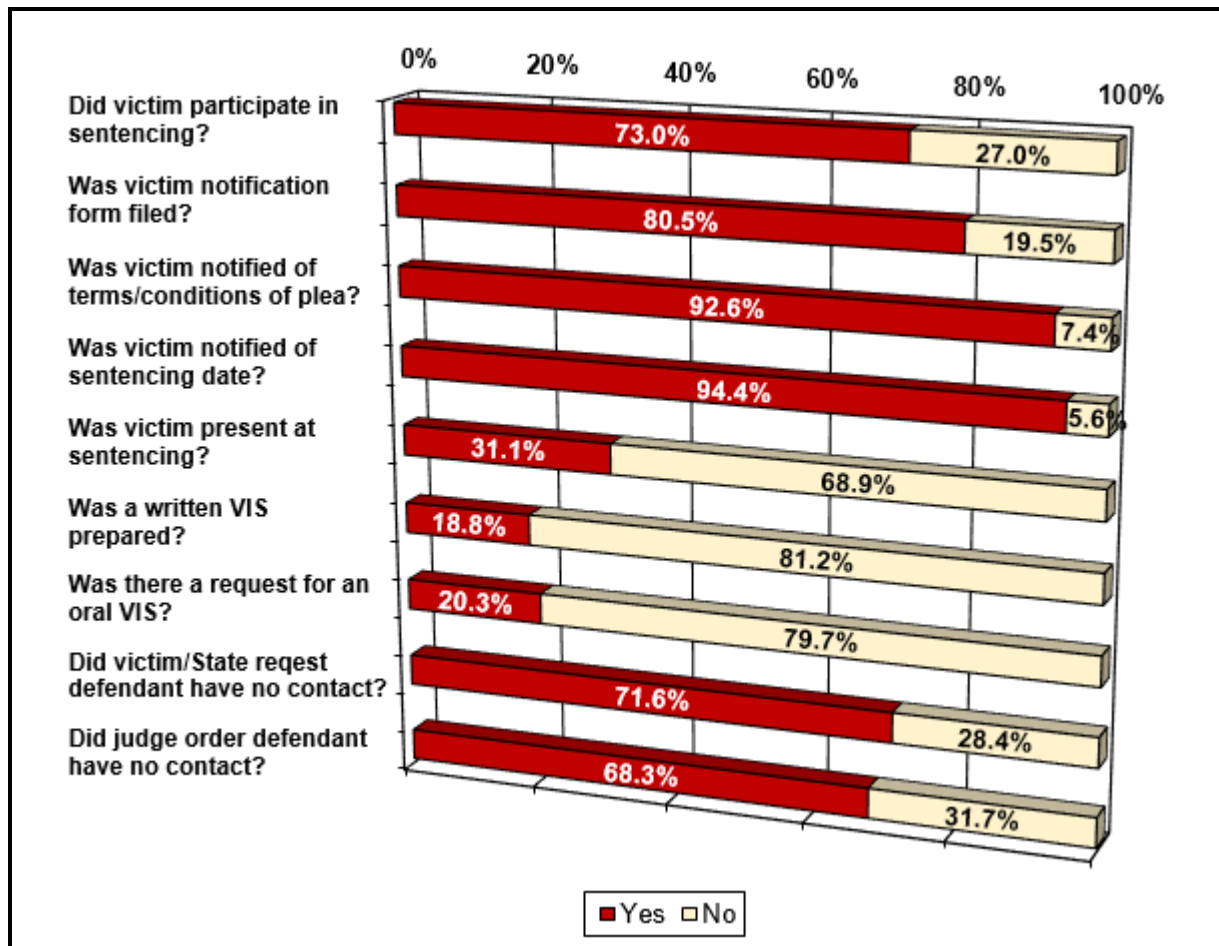
Figure 21 illustrates that 57.4% of worksheets with valid information on the victim-related questions indicated there was a victim. The responses to the items in the *Victim Information* section of the worksheet for sentencing events involving a victim are summarized in Figure 22.

**Figure 21. Distribution of Guidelines Sentencing Events by Whether Victim Involved, Fiscal Year 2019**



In 27% of sentencing events 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 80.5% of sentencing events. Most victims (92.6%) were notified of the terms and conditions of a plea agreement prior to entry of a plea. Similarly, 94.4% of victims were notified of the court date for sentencing. Slightly less than one-third of victims were present at sentencing. A written Victim Impact Statement (VIS) was prepared in 18.8% of sentencing events involving a victim, while the victim or state made a request for an oral VIS in 20.3% of sentencing events. Finally, the victim or state made a request that the defendant have no contact with the victim in 71.6% of sentencing events, and the sentencing judge ordered the defendant to have no contact with the victim in 68.3% of sentencing events involving a victim.

**Figure 22. Distribution of Guidelines Sentencing Events by Victim Information, Fiscal Year 2019**

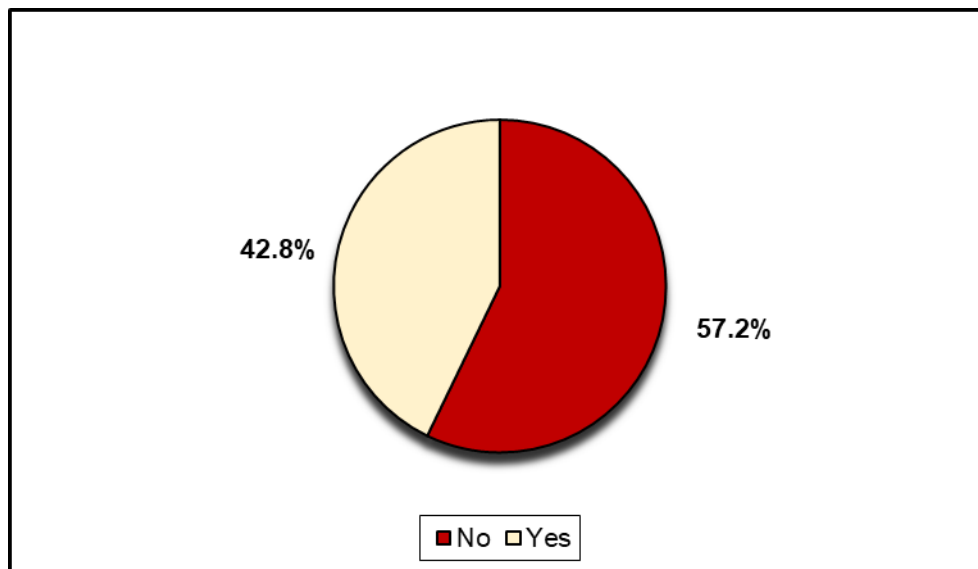




## Announcement Regarding the Mandatory Serving of 50% of a Sentence for Violent Offenses

Pursuant to CP, § 6-217, when a sentence of confinement that is to be served is imposed for a violent crime as defined in Correctional Services Article (CS), § 7-101, Annotated Code of Maryland, for which a defendant will be eligible for parole under CS, § 7-301(c) or (d), the court shall state in open court the minimum time the defendant must serve before becoming eligible for parole and before becoming eligible for conditional release under mandatory supervision under CS, § 7-501. The sentencing guidelines worksheet includes an entry location to report whether this announcement was made for sentences involving a violent crime. In fiscal year 2019, 2,682 sentencing guidelines events contained a sentence for a violent crime. The field capturing whether an announcement was made concerning the mandatory serving of 50% of the sentence was left blank for 777 or 29% of those sentencing events. Figure 23 indicates that among the 1,905 sentencing events with valid data, the announcement was made 42.8% of the time.

**Figure 23. Distribution of Guidelines Sentencing Events by Whether 50% Announcement Was Made, Fiscal Year 2019**



The MSCCSP staff will continue to review this announcement requirement when providing training sessions. Additionally, the statewide deployment of MAGS will help facilitate the collection of whether the announcement was made, as it is a required field necessitating completion prior to the electronic submission of any sentence involving a violent crime.

## PLANNED ACTIVITIES FOR 2020

The work of the MSCCSP in 2020 will be driven largely by pressing policy issues and concerns that develop throughout the course of the year. In addition to addressing emerging policy issues, the MSCCSP will continue to work on previously initiated activities, and will likely address several new activities as described below.

The MSCCSP will continue to administer Maryland's sentencing guidelines by collecting sentencing guidelines worksheets, maintaining the sentencing guidelines database, monitoring judicial compliance with the guidelines, providing sentencing guidelines education and training, and delivering orientation and instruction on the use of the MAGS application. Additionally, the MSCCSP will review all criminal offenses and changes in the criminal code resulting from the 2020 Legislative Session and adopt seriousness categories for these offenses.

The MSCCSP staff will continue to work with programmers at DPSCS to release an updated version of MAGS. MAGS 9.0 will allow part A of the offender score to vary by offense, and will include additional updates requested by various MAGS users. Finally, the MSCCSP will continue coordination with the AOC to implement a statewide, aggregated worksheet status report.

The MSCCSP has identified also an ambitious list of new activities that the Commission plans to address in 2020, including the following:

- Distribute a survey to circuit court judges, the Maryland State's Attorney's Association, and the Criminal Defense Attorney's Association to solicit feedback on the sentencing guidelines and the work of the MSCCSP.
- Provide sentencing guidelines training in a centralized location that would also allow for interactive web-based participation.
- Produce a series of topical, mini-reports to highlight statistics on topics of interest.
- Review the criminal record decay factor to consider whether the crime-free "clock" should start as soon as an offender is at-risk to reoffend within the community.
- Initiate a multi-agency focus group to review whether the pre-sentence investigation (PSI) report could include a validated risk-needs assessment.
- Review the definition for binding ABA pleas to consider inclusion of specific examples of what constitutes an ABA plea.

- Review the instructions for vulnerable victim under part D of the offense score to consider whether clarifying instructions can be provided.
- Review offenses that require the sentence to be “separate from and consecutive to a sentence for any crime based on the act establishing the violation of this section” (e.g., crime of violence in the presence of a minor, subsequent use of assault weapon in felony or crime of violence, and subsequent conviction for manufacture, distribute or dispense CDS near schools or on school vehicles) and consider whether the sentencing guidelines rules should require the upper guidelines limit to be stacked similar to the multiple victim stacking rule.

The activities described above, in combination with work associated with any pressing policy issues and concerns that develop in the course of the year, are but a few of the many tasks that will be considered by the MSCCSP in 2020 to support the consistent, fair, and proportional application of sentencing practices in Maryland.

## APPENDICES

## Appendix A:

### Sentencing Guidelines Matrices

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

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

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

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

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

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

## Maryland Sentencing Guidelines Worksheet (version 2.0)

7/2019 (2.0)



## Appendix C:

### Sentencing Guidelines Compliance and Average Sentence by Offense Type, Single Count Cases, Fiscal Year 2019 (Most Common Person, Drug, and Property Offenses)

Person Offenses	N	Guidelines Compliance			% Incarc <sup>26</sup>	Average Sentence Among Incarcerated	
		Within	Below	Above		Total Sentence	Total, Less Suspended
Assault, 2 <sup>nd</sup> Degree	1,130	88.7%	8.1%	3.3%	72.5%	5.4 years	1.1 years
Robbery	397	88.2%	10.3%	1.5%	91.4%	8.3 years	2.9 years
Wear, Carry, or Transport Handgun	252	90.1%	9.9%	---	64.7%	2.5 years	0.6 years
Assault, 1 <sup>st</sup> Degree	216	70.4%	28.2%	1.4%	94.4%	13.8 years	4.6 years
Possession of Regulated Firearm by Restricted Person	208	83.1%	16.9%	---	86.1%	4.3 years	1.5 years
<b>Drug Offenses</b>							
Distribute, PWID, Manufacture, etc. Cocaine	759	66.7%	33.1%	0.3%	78.5%	8.3 years	2.2 years
Distribute, PWID, Manufacture, etc. Marijuana	637	92.2%	6.3%	1.6%	50.9%	3.2 years	0.4 years
Distribute, PWID, Manufacture, etc. Heroin	380	71.8%	27.6%	0.5%	82.9%	8.4 years	2.6 years
Possess Marijuana	256	91%	3.1%	5.9%	35.9%	0.3 years	0.1 years
Possess Cocaine	165	86.7%	3.6%	9.7%	67.9%	0.8 years	0.3 years
<b>Property Offenses</b>							
Burglary, 1 <sup>st</sup> Degree	212	81.1%	17.6%	0.9%	81.1%	10.3 years	3.4 years
Burglary, 2 <sup>nd</sup> Degree	188	78.2%	21.8%	---	84%	7.5 years	2.4 years
Felony Theft or Theft Scheme, At Least \$1,500 but Less Than \$25,000	183	86.9%	9.3%	3.8%	59.6%	3.7 years	1 year
Burglary, 4 <sup>th</sup> Degree	171	78.9%	19.3%	1.8%	66.1%	2.2 years	0.7 years
Felony Theft or Theft Scheme, At Least \$100 but Less Than \$1,500	111	78.4%	19.8%	1.8%	66.7%	0.4 years	0.3 years

<sup>26</sup> % *Incarcerated* includes those who are incarcerated pre-trial only, as well as those incarcerated after sentencing.

## Appendix D:

### Description of Types of Disposition

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

## Appendix E:

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

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

## Appendix F:

### Maryland Automated Guidelines System (MAGS) Deployment Schedule

Jurisdiction	Circuit	Deployment Date
Montgomery	6	May 8, 2012
Calvert	7	June 2, 2014
Frederick	6	March 2, 2015
Charles	7	July 1, 2015
Prince George's	7	October 1, 2015
St. Mary's	7	December 1, 2015
Cecil	2	January 1, 2016
Harford	3	April 1, 2016
Baltimore County	3	October 1, 2016
Allegany	4	January 1, 2017
Garrett	4	January 1, 2017
Washington	4	April 1, 2017
Caroline	2	July 1, 2017
Talbot	2	July 1, 2017
Kent	2	October 1, 2017
Queen Anne's	2	October 1, 2017
Dorchester	1	January 1, 2018
Somerset	1	January 1, 2018
Wicomico	1	April 1, 2018
Worcester	1	July 1, 2018
Howard	5	October 1, 2018
Carroll	5	January 1, 2019
Anne Arundel	5	April 8, 2019
Baltimore City	8	October 1, 2019