



**MARYLAND STATE COMMISSION  
ON CRIMINAL SENTENCING POLICY**

**ANNUAL REPORT**  
**2020**

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- |  |  |
|--|--|
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| ❖ <b>Richard A. Finci, Esquire</b><br>Criminal Defense Attorney                    | ❖ <b>William (Willy) E. Koutroumpis</b><br><b>Lisa M. Spicknall-Horner</b><br>Public Representatives             |
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- ❖ **Paul B. DeWolfe, Esquire**  
**(Donald E. Zaremba, Esquire, Public Defender's Representative (12/2020 – Present))**  
**(William M. Davis, Esquire, Public Defender's Representative (3/2010 – 11/2020))**  
Public Defender
- ❖ **Robert L. Green**  
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Secretary of Department of Public Safety & Correctional Services

Maryland State Commission on  
Criminal Sentencing Policy

2020 | Annual Report



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Policy Analyst

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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

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### Executive Director

David A. Soulé, Ph.D.

January 25, 2021

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. Accordingly, we submit respectfully for your review the 2020 Annual Report of the MSCCSP.

2020 was a difficult year on many levels due to the COVID-19 pandemic. The MSCCSP worked diligently throughout the year to continue to be a valuable resource for the courts and partnering criminal justice agencies. This report details the activities of the MSCCSP during this past year, highlighted by the Commission's adaptation to changing operations with the launch of training webinars to provide live and on-demand online sentencing guidelines education. The Commission also completed a comprehensive review of binding plea agreements, resulting in clarified guidelines compliance rules to be adopted effective April 1, 2021. Further, the MSCCSP published a series of topical mini-reports titled the *Sentencing Snapshot* intended to provide a brief overview of sentencing trends to aid the public's understanding of sentencing policy and practice.

The 2020 Annual Report summarizes circuit court sentencing practices and trends in Maryland for fiscal year 2020, 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 2021. 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.

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 geographic 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 2020, the MSCCSP reviewed new and amended criminal laws from the 2020 Legislative Session, reviewed and classified previously unclassified offenses, made miscellaneous modifications to the Guidelines Offense Table, voted to adopt a clarification to the instructions for scoring the special victim vulnerability component of the offense score, voted to revise the definition of and term used to refer to guidelines-compliant plea agreements, adopted clarified instructions for part A of the offender score when a sentencing event involves two or more criminal offenses and the defendant was in the criminal justice system (CJS) when one offense occurred but not when the other occurred, adopted instructions for the prior adult record score to provide guidance for prior military adjudications, and conducted a survey of members of the Maryland criminal justice community, including judges, state's attorneys, and defense attorneys, to solicit feedback on the State's sentencing guidelines and the activities of the MSCCSP.

In fiscal year 2020, the MSCCSP received guidelines worksheets for 7,768 sentencing events in the State's circuit courts. A worksheet was submitted for 95.3% of guidelines-eligible cases. Worksheets for 93.6% of the 7,768 sentencing events were submitted electronically using the Maryland Automated Guidelines System (MAGS). The vast majority of cases were resolved by either an American Bar Association (ABA) plea agreement (48.9%) or a non-ABA plea agreement (33.5%). 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. Commission-defined corrections options were utilized in 6% of sentencing events, and 5.4% of defendants received a sentence involving other alternatives to incarceration.

The overall guidelines compliance rate in fiscal year 2020 was 83.8%, 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 defendant race, rates were similar across racial categories. Guidelines compliance ranged from 82.1% for White defendants to 88.6% for Hispanic defendants.

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 2021. The MSCCSP will continue to administer the sentencing guidelines by collecting sentencing guidelines worksheets, maintaining the sentencing guidelines database, monitoring judicial compliance with the guidelines, and providing sentencing guidelines education and training. Additionally, the MSCCSP will review all criminal offenses and changes in the criminal laws passed by the General Assembly during the 2021 Legislative Session and adopt seriousness categories for new and revised offenses as needed. Furthermore, the MSCCSP will conduct a guidelines compliance cell-by-cell analysis to review the average sentences and guidelines ranges in each cell of the three sentencing guidelines scoring matrices. Finally, the MSCCSP has identified an ambitious list of other new activities that the Commission will plan to address in 2021.

## 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 geographic 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 sentencing guidelines are intended to be primarily descriptive; that is, the guidelines are informed by analysis of actual sentencing practices and are designed to illustrate to judges how their colleagues are sentencing, on average for a typical case. The descriptive nature of the guidelines originated from the Judicial Committee on Sentencing that first developed and

proposed the guidelines to the Maryland Judicial Conference. In 1991, the Sentencing Guidelines Revision Committee of the Judiciary's Guidelines 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 should be revised. Based on this previously adopted policy, the Commission adopted the goal of 65% as the benchmark standard for sentencing guidelines compliance. Over the years, the MSCCSP has maintained the primarily descriptive nature of the guidelines, while allowing for the Commission to make some nuanced policy decisions to ensure the guidelines are scored consistently from jurisdiction to jurisdiction and on a case-by-case basis. The guidelines are not intended to be static. That is, the guidelines may be amended when the data indicate that sentences are not consistent with the recommended ranges.

### **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.

**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. 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 for guidelines-eligible criminal cases prosecuted in circuit court to determine the recommended sentencing outcome and to record sentencing data. Appendix B provides a copy of the current Maryland sentencing guidelines worksheet. The courts are expected to review worksheets to confirm that the guidelines reflected on the worksheets were considered in the respective cases (COMAR 14.22.01.03F(4)). The electronic worksheets are completed and submitted via the Maryland Automated Guidelines System (MAGS). The Commission staff is responsible monitoring all data collected within the sentencing guidelines worksheets. Data collected by the Commission permit analyses of sentencing trends with respect to compliance with the guidelines, particular offenses, specific types of offenders, and geographic variations. The MSCCSP uses the guidelines data to monitor circuit court sentencing practices and when necessary, to adopt changes to the guidelines consistent with legislative intent.

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

## **MSCCSP Structure**

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



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. Other Governor appointees include William E. Koutroumpis, a member of the public, and Lisa M. Spicknall-Horner, Executive Director for Donate Life Maryland, 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; Alethea P. Miller, Forensic Interviewer/Victim Advocate for the Harford County State's Attorney's Office, 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 June 17, 2020, Alethea P. Miller replaced Molly Knipe, who served as a member of the MSCCSP from September 2019 through April 7, 2020.

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 David Moon. The Speaker of the House, Adrienne A. Jones, appointed Delegate David Moon to the MSCCSP on January 10, 2020. Delegate Moon replaced then Delegate Charles E. Sydnor III, who served as a member of the MSCCSP from July 1, 2019 through January 3, 2020.

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. Donald E. Zaremba, Chief of Strategic Operations for the Maryland Office of the Public Defender, replaced William (Bill) M. Davis, Esquire, as the representative for State Public Defender, Paul DeWolfe, on December 4, 2020. Mr. Davis served as a member of the MSCCSP from March 2010 to November 2020.

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



DEPARTMENT OF  
CRIMINOLOGY AND  
CRIMINAL JUSTICE

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. 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 in the past, the MSCCSP has relied on student interns for a portion of its data entry requirements, while also receiving administrative and information technology support from the University. Additionally, the MSCCSP typically has a graduate research assistant from the University of Maryland fulfill its policy analyst position. In return, the University benefits from opportunities for students and graduate research assistants to develop research and practical skills through their experience at the MSCCSP.

### **In Memoriam – William M. Davis, Esquire**

It is with great sadness that the MSCCSP reports that William (Bill) M. Davis, Esquire, passed away on November 9, 2020. Mr. Davis served as the representative for the State Public

Defender, Paul DeWolfe, from March 2010 – November 2020 and brought a tremendous amount of knowledge and professionalism in his contributions to the Commission throughout his tenure. The MSCCSP expresses its condolences to his family, friends, and colleagues. He will be greatly missed.

## MSCCSP ACTIVITIES IN 2020

The MSCCSP held five meetings in 2020. The January 29 and February 20 meetings were held via teleconference. Due to the COVID-19 pandemic, the remaining meetings were held via videoconference on July 7, September 15, and December 8. In addition, the Commission held its annual public comments hearing on December 8. In compliance with the Public Meetings Act, meeting details (including call-in numbers for the teleconference meetings) were published to the MSCCSP website. Additionally, the July, September, and December meetings were livestreamed through the [MSCCSP's YouTube channel](#). The minutes for all Commission meetings are available on the Commission's website ([www.msccsp.org](http://www.msccsp.org)).<sup>1</sup> The following discussion provides a review of the Commission's activities in 2020.

### Review of New and Amended Offenses Passed During the 2020 Legislative Session

The MSCCSP reviewed new criminal laws from the 2020 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 2020 Legislative Session

The MSCCSP reviewed two new offenses passed during the 2020 Legislative Session and voted for their respective seriousness categories, shown in Table 2, during the July 7 meeting. After promulgating the proposed classifications for the new offenses through the COMAR review process, the MSCCSP adopted these updates effective November 2, 2020.

**Table 2. Guidelines Offense and Adopted Seriousness Category Related to New Offenses, 2020 Legislative Session**

Legislation	Annotated Code of Maryland	Offense	Statutory Maximum	Adopted Seriousness Category
Chapters 21 and 22 (HB0005/SB0161)	CR, §10-305.1 CR, §10-306(a) (penalty)	<b>Hate Crimes</b> Use of an item or a symbol to threaten or intimidate	3 years	V

<sup>1</sup> The minutes for the December 8 meeting will be available on the MSCCSP website after the Commission reviews and approves the minutes at its next meeting, scheduled for May 11, 2021.

Legislation	Annotated Code of Maryland	Offense	Statutory Maximum	Adopted Seriousness Category
Chapters 128 and 129 (HB0246/SB0231) <sup>2</sup>	CR, §3-324(d)(2)	<b>Sexual Crimes</b> Sexual solicitation of a minor or law enforcement officer posing as a minor, subsequent	20 years	III

### Amended Offenses Passed During the 2020 Legislative Session

The MSCCSP considered amended criminal laws from the 2020 Legislative Session and identified five offenses that required review due to changes regarding their incarceration penalties. Table 3 notes the five 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 7 meeting. After promulgating these proposed offense table updates through the COMAR review process, the MSCCSP adopted these revisions effective November 2, 2020.

**Table 3. Guidelines Offenses and Adopted Seriousness Categories Related to Amended Offenses, 2020 Legislative Session**

Legislation	Annotated Code of Maryland	Offense	Prior Stat. Max. / Seriousness Category	New Stat. Max. / Seriousness Category
Chapter 93 (HB0171)	CR, §10-620	<b>Animals, Crimes Against</b> Interfering with an equine	3 years / VI	1 year / VII
Chapters 385 and 386 (HB0947/SB0169)	HO, §4-503(c) HO, §4-606(c) (penalty)	<b>Fraud, Miscellaneous</b> Conducting unauthorized dental laboratory work or advertising a dental appliance without a dental license	6 months / VII	2 years / VII
Chapters 385 and 386 (HB0947/SB0169)	HO, §4-601(a) HO, §4-602 HO, §4-606(a)(1)(i) (penalty)	<b>Fraud, Miscellaneous</b> Practicing dentistry without a license or misrepresentation as practitioner of dentistry, 1 <sup>st</sup> offense	6 months / VII	1 year / VII
Chapters 385 and 386 (HB0947/SB0169)	HO, §4-601(a) HO, §4-602 HO, §4-606(a)(1)(ii) (penalty)	<b>Fraud, Miscellaneous</b> Practicing dentistry without a license or misrepresentation as practitioner of dentistry, subsequent	1 year / VII	5 years / VI
Chapter 45 (HB0081) <sup>3</sup>	CR, §3-321	<b>Sexual Crimes</b> Sodomy	10 years / IV	N/A

<sup>2</sup> This bill created a new separate maximum penalty for a subsequent offense effective October 1, 2020.

## Miscellaneous Modifications to the Guidelines Offense Table in 2020

In its continued review of seriousness categories for all criminal offenses sentenced in the State's circuit courts, the MSCCSP identified five offenses with maximum incarceration penalties of one year or more, not previously classified by the Commission. The Commission reviewed these five previously unclassified offenses, listed in Table 4, during the July 7 meeting, and voted for seriousness categories and offense type classifications consistent with those for similar offenses. After promulgating the proposed classifications through the COMAR review process, the MSCCSP adopted these updates effective November 2, 2020.

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

Annotated Code of Maryland	Offense	Statutory Maximum	Offense Type	Adopted Seriousness Category
Common Law	<b>Counterfeiting</b> Counterfeiting of private instruments and documents, not covered by CR, §8-601	LIFE	Property	V
Common Law	<b>Counterfeiting</b> Counterfeiting of public documents, not covered by CR, §8-605	LIFE	Property	V
Common Law	<b>Counterfeiting</b> Issuing counterfeit private instruments and documents, not covered by CR, §8-602	LIFE	Property	V
CR, §8-701	<b>Estates, Crimes Against</b> Embezzle, alter will or record	7 years	Property	VI
CJ, §10-4A-02(b)(1)(ii)	<b>Stored Wire and Electronic Communications Access, Crimes Involving</b> Obtaining, altering, or preventing authorized access to a wire or electronic communication while it is in electronic storage in an electronic communications system, subsequent	2 years	Property	VI

In 2020, eight 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

<sup>3</sup> This bill repealed the crime of sodomy effective October 1, 2020. Since the guidelines apply only to criminal offenses, this offense was removed from the Guidelines Offense Table. *Sodomy* occurring on/after October 1, 2020, is not a guidelines offense.

(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 for consistency purposes and/or 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 offense table effective July 1, 2020 (for the abuse, identify fraud, and pretrial release offenses) and November 2, 2020 (for the fraud and stored wire and electronic communications access offenses).

**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
FL, §5-801	<b>Abuse and Other Offensive Conduct</b> Confine unattended child	30 days	Person	VII
HO, §14-5D-17 HO, §14-5D-18(a) (penalty)	<b>Fraud, Miscellaneous</b> Practicing athletic training without a license	1 year	Person	VII
HO, §§14-5E-20 – 14-5E-22 HO, §14-5E-23(a) (penalty)	<b>Fraud, Miscellaneous</b> Practicing perfusion without a license	1 year	Person	VII
HO, §§14-5B-17 – 14-5B-18.1 HO, §14-5B-19(a) (penalty)	<b>Fraud, Miscellaneous</b> Practicing radiation therapy, nuclear medicine technology, radiography, or radiology assistance without a license	1 year	Person	VII
HO, §§14-5A-20 – 14-5A-22.1 HO, §14-5A-23(a) (penalty)	<b>Fraud, Miscellaneous</b> Practicing respiratory care without a license	1 year	Person	VII
CR, §8-303	<b>Identity Fraud</b> Possess/use false government ID; display government ID of another	6 months	Property	VII
CP, §5-213.1	<b>Pretrial Release, Crimes Involving</b> Violate release conditions while charged with committing a sexual crime against a minor, a crime of violence, a crime against a person eligible for relief, or stalking	90 days	Person	VII

Annotated Code of Maryland	Offense	Statutory Maximum	Offense Type	Adopted Seriousness Category
CJ, §10-4A-02(b)(1)(i)	<b>Stored Wire and Electronic Communications Access, Crimes Involving</b> Obtaining, altering, or preventing authorized access to a wire or electronic communication while it is in electronic storage in an electronic communications system, 1 <sup>st</sup> offense	1 year	Property	VII

Finally, effective July 1, 2020, fentanyl was included in the Guidelines Offense Table in the list of examples of drugs with a seriousness category IIIB for distribution, PWID, manufacture, etc. Similarly, a unique entry for *CDS distribution, PWID, manufacture, etc.–Fentanyl* was added to the list of offenses in MAGS. Previously, MAGS users were instructed to select *CDS distribution, PWID, manufacture, etc.–Other narcotics* when the distribution-related offense involved fentanyl.

### Clarifying the Instructions for Scoring Special Victim Vulnerability

Part D of the offense score, special victim vulnerability, instructs that one point shall be scored for person offenses if the victim is a vulnerable victim, which is defined as anyone younger than 11 years old, 65 years or older, or having a temporary or permanent physical or mental handicap, including an individual who is physically or mentally limited in a material way. In recent years, multiple practitioners have contacted the MSCCSP to inquire as to whether certain conditions constitute a special victim vulnerability, in particular pregnancy, intoxication, and sleep. Based on the frequency of questions and feedback from the criminal justice community, the Commission voted at its September 15, 2020, meeting to revise the definition of special victim vulnerability to provide examples of temporary physical or mental limitations including, but not limited to, instances when the offender knew or should have known the victim was pregnant, unconscious, asleep, or intoxicated. Additionally, the Commission voted at its September 15 meeting to revise the term “handicap” to read “disability.” The proposed revisions were submitted to COMAR in September 2020 for promulgation through the review process, with an expected implementation date of February 1, 2021.

### Revisions to the Definition of Guidelines-Compliant Plea Agreements

The Maryland Sentencing Guidelines Manual (MSGM) defines an American Bar Association (ABA) plea agreement as a plea agreement that a court has approved relating to a particular

sentence, disposition, or other judicial action. The agreement is binding on the court under Maryland Rule 4-243(c). ABA pleas affect sentencing guidelines compliance, as sentences pursuant to an ABA plea agreement are deemed guidelines-compliant regardless of whether the initial sentence (defined as the sum of incarceration, credited time, and home detention) falls within the applicable guidelines range. The MSCCSP adopted the ABA plea agreement compliance policy in 2001 to acknowledge that ABA plea agreements reflect the consensus of the local view of an appropriate sentence within each specific community.

In recent years, multiple practitioners have contacted the MSCCSP to inquire as to what constitutes an ABA plea and, in particular, the level of specificity required for a plea agreement to be considered an ABA plea. In large part due to the frequency of questions surrounding the definition of an ABA plea, the Commission indicated in its 2019 annual report plans to review in 2020 the current definition of binding ABA pleas, with the understanding that the review would necessitate a fuller discussion of guidelines compliance and the longstanding ABA plea agreement compliance rule.

During the 2020 Legislative Session, House Bill (HB) 1458 (The Truth in Plea Deals Act of 2020) was introduced, providing that a sentence imposed pursuant to a plea agreement may not be deemed compliant with the sentencing guidelines unless the sentence falls within the actual sentencing guidelines range. In its written testimony for HB 1458, the MSCCSP indicated that the Commission planned to review in 2020 the definition of ABA pleas and the longstanding ABA plea agreement compliance rule. The testimony requested that the legislature defer the proposed legislation to allow the Commission to study the issue and report its findings to the legislature by the start of the 2021 Legislative Session.<sup>4</sup>

In keeping with the Commission's plans as indicated in its 2019 annual report and consistent with the Commission's testimony for HB 1458 (2020), the MSCCSP studied this issue during the course of 2020. The Commission reviewed definitions of binding plea agreements from other jurisdictions, examined relevant Maryland case law, and analyzed data on sentences for guidelines-eligible cases sentenced from 2017 through 2019. The Commission reviewed the ABA plea definition and compliance policy at its July, September, and December 2020 meetings.

Informed by this review, the Commission, at its December 8, 2020, meeting, agreed that the term "ABA plea agreement" is not universally known and should be replaced with the more

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<sup>4</sup> HB 1458 did not advance out of the Judiciary Committee.

intuitive “MSCCSP binding plea agreement.” Further, the Commission adopted proposed revisions to the definition of an MSCCSP binding plea agreement to clarify that a binding plea involves agreement from all three parties and to confirm that the court maintains the discretion to accept or reject the plea. Finally, the Commission adopted language to clarify that an MSCCSP binding plea agreement means an agreement to a specific amount of active time (if any), not merely a sentence cap or range. The revised definition of an MSCCSP binding plea agreement reads as follows:

A plea agreement presented to the court in agreement by an attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, that a court has approved relating to a particular sentence and disposition. An MSCCSP binding plea agreement means an agreement to a specific amount of active time (if any), not merely a sentence cap or range. The court has the discretion to accept or reject the plea. The agreement is binding on the court under Maryland Rule 4-243(c) if the court accepts the plea.

The Commission believes the revised definition and term for guidelines-compliant pleas will reduce the number and percentage of pleas that are considered guidelines-compliant because judges may choose to accept the binding plea terms only if he or she agrees with the specified active time that was presented in agreement by both the State and the defense. The revised definition and term will bring greater transparency to guidelines-compliant sentences, strengthen public trust, and provide more uniformity in understanding what type of pleas are guidelines-compliant.

The proposed revisions were submitted to COMAR in December 2020 for promulgation through the review process, with an expected implementation date of April 1, 2021. In addition, as offered in its testimony on HB 1458, the MSCCSP submitted in January 2021 to the Senate President, the Speaker of the House, and the respective Chairs of the Senate Judicial Proceedings Committee and House Judiciary Committee, a letter outlining the review process undertaken and the revisions to the definition of a MSCCSP binding plea agreement adopted by the Commission.

### **Adoption of Clarifying 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. Previously, the MSGM instructed that the offender score shall be calculated the same across all offenses in a sentencing event. Prior to 2020, multiple practitioners contacted the MSCCSP to inquire 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. Previously, two sample cases provided in the MSGM (Version 11.0) instructed that the highest offender score should be used to calculate the guidelines across all offenses contained within a sentencing event, however the guidelines instructions did not address specifically a scenario where an offender's CJS supervision status differs between offenses contained in the same sentencing event.

The Commission discussed during 2019 several possible solutions to the issue. To provide the most accurate information to the sentencing judge, the Commission voted, at its July 9, 2019, meeting, to revise the instructions for part A of the offender score to allow for part A to differ across offenses contained within the same sentencing event. After promulgating the proposed revisions through the COMAR review process, the MSCCSP adopted the revisions to the instructions for part A of the offender score effective February 1, 2020.

### **Adoption of Instructions for the Prior Record Score to Provide Guidance for Prior Military Adjudications**

Prior to 2020, 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. Previously, the MSGM did not explicitly address military adjudications.

The MSCCSP discussed military adjudications and their application to the prior adult criminal record score at its December 10, 2019, meeting. 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 AWOL, are unique to the military and result from circumstances not encountered by civilians. For these reasons, the MSCCSP voted at its December 10, 2019, meeting, 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. After promulgating the proposed revisions through the COMAR review process, the MSCCSP adopted the revised instructions to the prior record score effective July 1, 2020.

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

In February 2020, the MSCCSP deployed MAGS Version 9.0 of the Maryland Sentencing Guidelines Worksheet. Version 9.0 implemented changes relating to the scoring of part A of the offender score, the defendant's relationship to the CJS when the instant offense occurred. Pursuant to the revised instructions for scoring part A of the offender score, adopted in COMAR effective February 1, 2020, the MSCCSP revised the Maryland Sentencing Guidelines Worksheet to allow for part A of the offender score to differ across offenses in multiple offense sentencing events. If there is more than one instant offense and the offender was in the CJS at the time one or more offenses occurred, but not in the CJS at the time additional offense(s) in the sentencing event occurred, the person completing the sentencing guidelines worksheet shall assign a score of 1 to those offenses that were committed while the offender was in the CJS.

The person completing the sentencing guidelines worksheet shall assign a score of zero to those offenses that were committed while the offender was not in the CJS.

The Maryland Sentencing Guidelines Worksheet was further revised to provide space for three total offender scores, one corresponding to each offense entered on the worksheet. When worksheets are completed via MAGS or the Guidelines Calculator Tool and part A of the offender score differs between offenses, a score of 0 points will be marked with a blue circle, and the total offender score and individual offense guidelines range associated with 0 points will be recorded in blue. A score of 1 point will be marked with a green circle, and the total offender score and individual offense guidelines range associated with 1 point will be recorded in green.

## 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). Due to the COVID-19 pandemic, in 2020, the majority of guidelines trainings and MAGS orientations were conducted remotely through interactive online webinars. The MSCCSP completed two general webinar trainings on August 5 and August 12. Approximately 115 criminal justice practitioners, including circuit court judges, judicial staff, prosecutors, public defenders, Parole and Probation agents, and private defense attorneys participated in the webinar trainings. Additionally, at the request of the Maryland Administrative Office of the Courts (AOC), the MSCCSP staff recorded a web-based video training titled, *“Maryland’s Sentencing Guidelines and the Automated Guidelines System,”* which was made available to all incoming law clerks in the fall of 2020. Lastly, the Judicial College invited the MSCCSP to lead a webinar training for judges titled, *Making Informed Sentencing Decisions: Enhancing Sentencing Guidelines Policy and Knowledge*. Six judges participated in the live interactive webinar on September 22. Following the webinar, a recording of the training was made available to all judges through the Judicial College’s digital library.

Due to high demand, a recording of the August 12 webinar training titled, *Maryland’s Sentencing Guidelines and the Automated Guidelines System*, was uploaded to the [MSCCSP’s YouTube channel](#) to allow for practitioners to view the training on demand. At year-end 2020, the webinar

recording had been viewed approximately 175 times. In total, the MSCCSP provided five guidelines trainings and MAGS orientations that were attended by approximately 145 participants in 2020. While the number of on-site guidelines trainings and MAGS orientations decreased due to COVID-19, the MSCCSP is reaching a broader audience in terms of the total number of individuals who are able to view and/or participate in the online training sessions.

This past year, the MSCCSP Executive Director, Dr. David Soulé, met with the circuit court judges and/or judicial court staff in four of Maryland's 24 jurisdictions (Allegany, Garrett, Harford, and St. Mary's Counties). 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 guidelines and the activities of the MSCCSP.

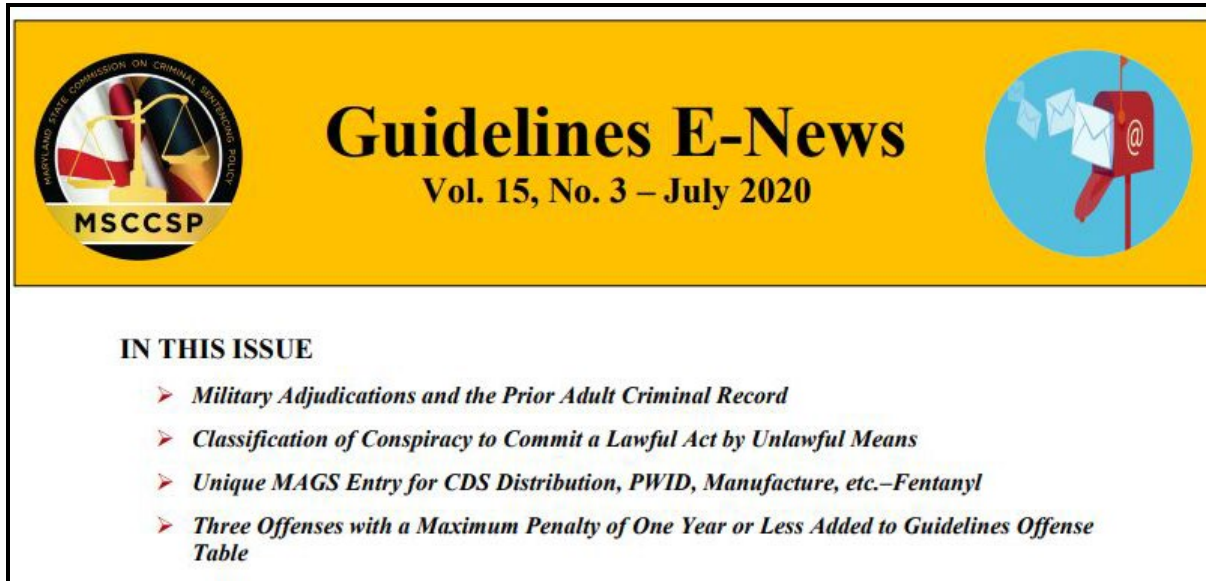
The MSCCSP also maintains a website ([www.msccsp.org](http://www.msccsp.org)) that it updates regularly to provide materials for criminal justice practitioners regarding the application of the guidelines, including links to the MAGS homepage and the GLCT, text-searchable and print-friendly copies of the most recent version of the MSGM and the Guidelines Offense Table, an instructional manual and training videos for MAGS, a recording of a guidelines calculation/MAGS webinar training, 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, *Sentencing Snapshots*, and other relevant reports. The MSCCSP website also provides minutes from prior Commission meetings and the date, location, and agenda for upcoming meetings. Finally, the MSCCSP website offers Google translate to provide equal access in approximately 100 languages. This ensures the MSCCSP website is compliant with Senate Bill 29/Chapter 733 of the Laws of Maryland (2018).

The MSCCSP released four updates to the MSGM in 2020. MSGM 12.0 (released February 1, 2020) includes the revision to part A of the offender score permitting the relationship to the criminal justice system to differ across offenses in multiple sentencing events. MSGM 12.1 (released April 1, 2020) includes an updated Guidelines Offense Table to reflect classification of a new offense passed during the 2019 Legislative Session, the addition of CJIS codes for a number of offenses, and other minor edits to the table. MSGM 12.2 (released on July 1, 2020) includes clarified instructions for the computation of the prior adult criminal record component of the offender score, specifically, which military adjudications shall and shall not be included in the calculation of the defendant's prior record. MSGM 12.2 also includes the classification and addition of *conspiracy to commit a lawful act by unlawful means* to the Guidelines Offense Table

and the addition of three offenses with a maximum penalty of 1 year or less to the Guidelines Offense Table. MSGM 12.3 (released November 1, 2020) includes several revisions to the Guidelines Offense Table to reflect the classification of new and amended offenses passed during the 2020 Legislative Session, the classification of five previously unclassified offenses, the addition of five offenses with a maximum penalty of one year or less, and other minor edits to the table.

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

In 2020, 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 to the guidelines and serves as an information source on sentencing policy decisions. For example, the [July 2020 edition](#) highlighted clarified instructions for the computation of the prior adult criminal record and notable updates to the Guidelines Offense Table.

**Image 1. Guidelines E-News, Vol.15, Issue No. 3**

## Information, Data Requests, and Outreach

The MSCCSP strives to be a valuable resource for criminal justice partners and others interested in sentencing policy. To aid public understanding of the sentencing process in Maryland, the MSCCSP responds to inquiries for information related to sentencing in the State's circuit courts. In 2020, the Commission responded to more than 50 requests for data and/or specific information related to the sentencing guidelines and sentencing trends throughout the State. A variety of individuals, including legislators/legislative staff, judges/court staff, prosecutors, defense attorneys, Parole and Probation agents, victims and their family members, defendants and their family members, faculty/students of law and criminal justice, and media personnel submit requests for information and/or data. The MSCCSP often provides an electronic data file created from the information collected on the sentencing guidelines worksheets to respond to data requests.

In 2020, the MSCCSP provided sentencing information and/or data to several committees/agencies including, but not limited to, the AOC, the Office of the Attorney General, the Office of the Public Defender, the Maryland Office of the State Prosecutor, the Baltimore City Police Department, the Maryland Department of Legislative Services, the Maryland Public Policy Institute, the Howard County State's Attorney's Office, the Wicomico County State's Attorney's Office, the Maryland Alliance for Justice Reform, the Nobel Software Group, the Drug Enforcement Policy Center, the George Washington University Law School, the Kansas

Sentencing Commission, the New Mexico Sentencing Commission, the Washington State Sentencing Guidelines Commission, and the Maryland Data Analysis Center.

In July 2020, the MSCCSP responded to requests for more reports on sentencing trends by publishing a series of topical mini-reports titled the [\*Sentencing Snapshot\*](#). The *Sentencing Snapshot* is published quarterly with new topics in each release. The MSCCSP hopes these mini-reports will aid the public's understanding of sentencing policy and practices. Additionally, the MSCCSP completes an annual topical report titled, *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). Both the *Sentencing Snapshot* and the common offenses report are available on the MSCCSP website. Appendix C provides an abbreviated version of the common offenses 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 2020, the Commission provided information for 115 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. On September 22, 2020, the MSCCSP Executive Director, Dr. Soulé provided a webinar for the Maryland Judicial College titled, *Making Informed Sentencing Decisions: Enhancing Sentencing Guidelines and Policy Knowledge*. Dr. Soulé also participated in meetings in November and December 2020 as a member of the Task Force to Study Crime Classification and Penalties. Finally, Dr. Soulé participated in a series of meetings in 2020 with participants from sentencing commissions in other states and the Council of State Governments to develop a plan to help state sentencing commissions gain access to federal criminal history records for public safety and research purposes.

## **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 (e.g., sentence outliers, selecting “other corrections options” for programs that do not meet the Commission’s criteria), reviewing the sentencing guidelines worksheets for these cases, and, when necessary, making corrections to the records in the database. The MSCCSP staff also routinely verifies 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 (301-403-4165) or 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. Effective October 1, 2019, MAGS is 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 2020 to continue the development and deployment of MAGS are summarized below.

**February 1, 2020:** The MSCCSP released an updated version of MAGS (9.0) for immediate use. MAGS 9.0 provided several new features. The following is a summary of the most significant changes to MAGS.

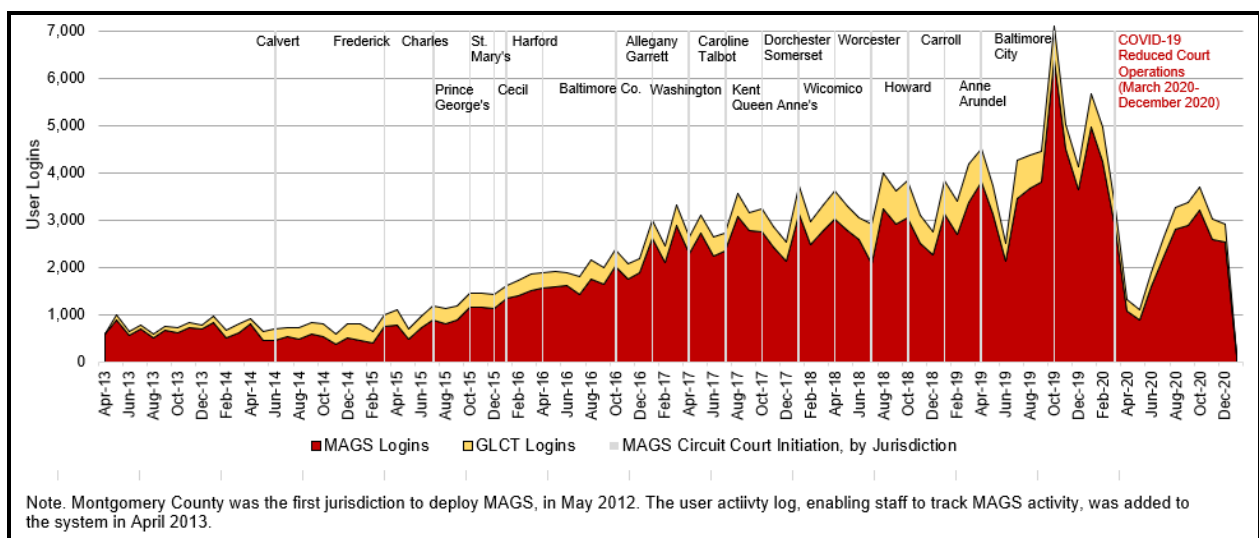
- Effective February 1, 2020, part A of the offender score, the defendant's relationship to the CJS, may differ across offenses in multiple offense sentencing events. To account for this revision to the guidelines, the offender score in MAGS is completed now in two parts. Parts B, C, and D of the offender score, which remain the same across all offenses contained within a sentencing event, are completed on the *Offender Score* screen, while part A of the offender score is completed on the *Offense/Offender Score* screen. For each subsequent offense that is added to the worksheet, the user must provide a score for part A of the offender score as the scores may differ across offenses. When viewing a PDF of the worksheet, there is now space for three total offender scores, one corresponding to each offense entered on the worksheet. When part A of the offender score differs between offenses, a score of 0 points is marked on the worksheet with a blue circle and the total offender score and individual offense guidelines range associated with 0 points are recorded in blue. A score of 1 point is marked with a green circle, and the total offender score and individual offense guidelines range associated with 1 point are recorded in green.

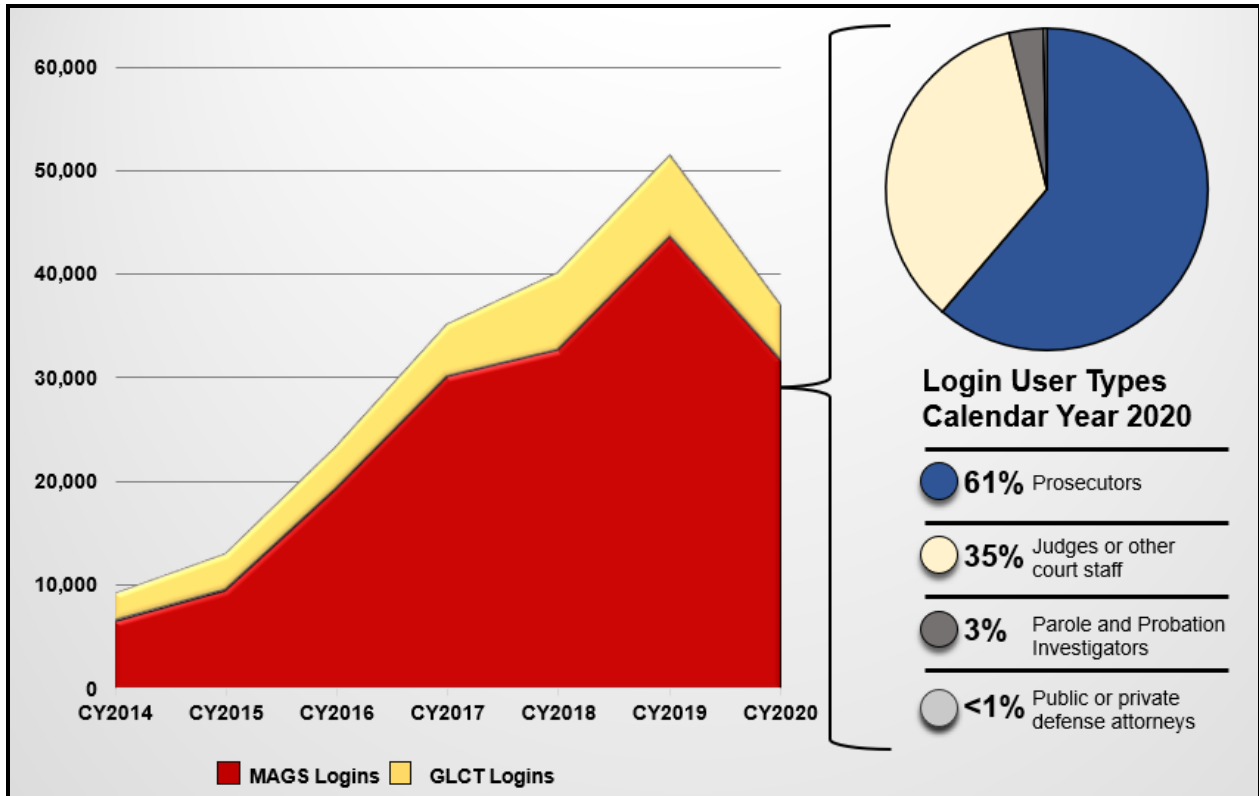
- A trashcan icon now appears next to each offense on the *Sentence* screen. Prior to MAGS Version 9.0, users could only edit, not delete, sentence information. This feature was added to MAGS in response to user feedback requesting the ability to remove sentence information from the worksheet. Users may click this button to clear all sentence information entered for an offense, for instance if sentencing information was entered in error.

**July 1, 2020:** A unique entry for *CDS distribution, PWID, manufacture, etc.–Fentanyl* was added to the list of offenses in MAGS. Previously, MAGS users were instructed to select *CDS distribution, PWID, manufacture, etc.–Other narcotics* when the offense involved fentanyl.

In calendar year 2020, there were approximately 32,000 MAGS user logins, a decrease of 27% from calendar year 2019 (see Figures 1 and 2). The decrease in user logins is attributed to restricted court operations due to COVID-19, from March 2020 through December 2020. The majority (96%) of the user logins in calendar year 2020 originated from either the prosecutors or the circuit courts. Additionally, the GLCT was accessed approximately 5,300 times in calendar year 2020, a 32 percent decrease from calendar year 2019. It was anticipated that the use of the GLCT would decrease following the statewide deployment of MAGS completed in October 2019, however the decrease in use of the GLCT observed in calendar year 2020 is largely attributed to restricted court operations.

**Figure 1. MAGS and GLCT User Logins, April 2013 through December 2020**



**Figure 2. MAGS User Logins, by User Type, Calendar Years 2014 through 2020**

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. Figure 1 indicates that, though the statewide deployment of MAGS was completed in October 2019, users still utilize the automated guidelines calculations and worksheets provided by the GLCT.

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

**GLCT GUIDELINES CALCULATOR TOOL**

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		

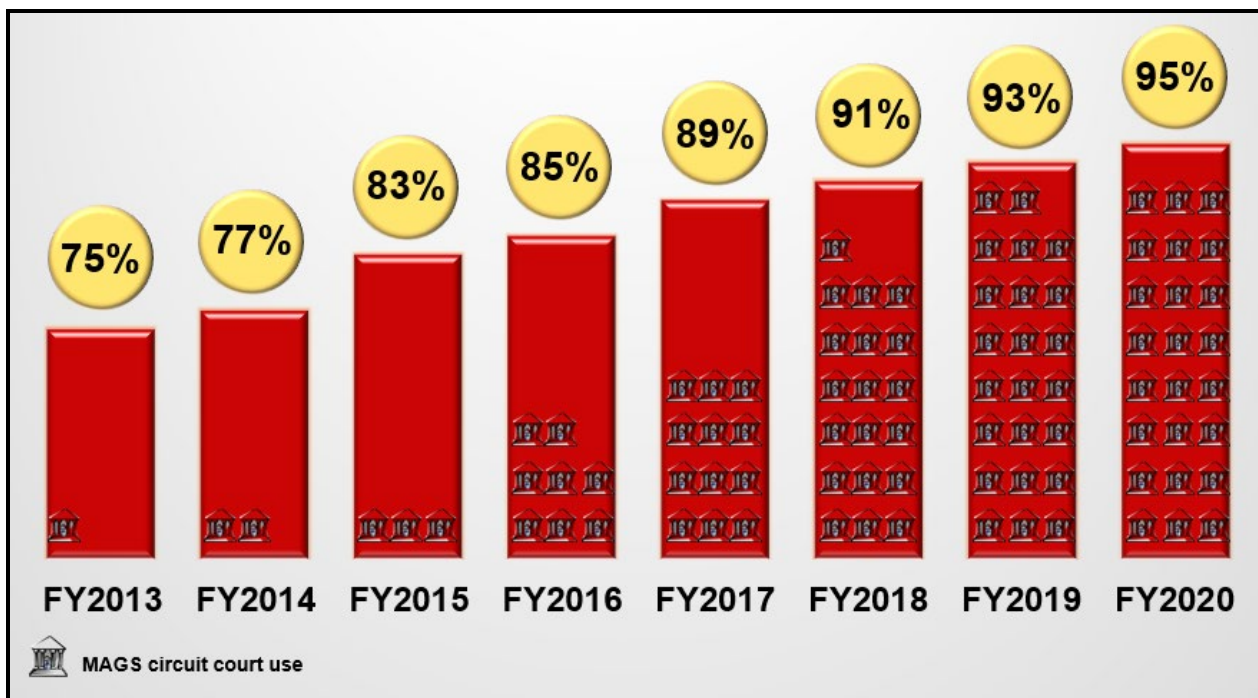
Overall Guidelines Range: 6M To 1Y

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>5</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 95% in fiscal year 2020 (see Figure 3). Additionally, the MSCCSP is coordinating with the AOC to implement a statewide, aggregated worksheet status report but that implementation has been delayed until full deployment of the Maryland Electronic Courts (MDEC) system. The MSCCSP anticipates that, in providing individual jurisdictions with feedback, worksheet submission rates will continue to near 100 percent thus improving the completeness and reliability of the MSCCSP's data.

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<sup>5</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 2020**



## 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 2020 public comments hearing occurred on December 8. 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, via email through the Commission's listserv, and through a press release by the DPSCS.

Executive Director Dr. Soulé began the public comments hearing with a brief presentation on the history and mission of the MSCCSP. During the public comments hearing, three individuals testified. The first speaker testified on behalf of the Maryland Alliance for Justice Reform (MAJR). The speaker's testimony addressed racial disparity in sentencing, data collected by the MSCCSP via the sentencing guidelines worksheet, and violations of probation. The second speaker testified on behalf of the Frederick County Cyber Crimes Task Force and the Maryland State's Attorneys' Association (MSAA). The speaker's testimony addressed the sentencing guidelines for offenses related to the online sexual exploitation of children. The third speaker

was a Maryland resident who testified on the collateral consequences of quasi life sentences and the confinement of children as adults.

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 11, 2021. The MSCCSP values the testimony provided by members of the public, as public participation is essential to creating awareness of sentencing issues.

### **Criminal Justice Community Survey**

In the spring of 2020, the MSCCSP developed a survey to solicit feedback from members of the Maryland criminal justice community on the State's sentencing guidelines and the activities of the MSCCSP. The purpose of the survey was to assess the work of the MSCCSP and to provide guidance on topics and issues the Commission may address moving forward. The survey consisted of a combination of multiple choice and open-ended questions, taking approximately 5 minutes to complete. The survey included four multiple choice questions intended to measure how often judges and attorneys utilize MSCCSP resources, including the MSCCSP website, the staff and helpdesk, MAGS, and the GLCT. The survey included five open-ended questions soliciting respondents' views of the activities of the MSCCSP and the sentencing guidelines.

On May 18, 2020, a link to the online survey was emailed to all circuit court judges, each jurisdiction's Office of the State's Attorney, the Office of the Attorney General, each district's Office of the Public Defender, and a sample of private criminal defense attorneys. The AOC distributed the survey to the circuit court judges on behalf of the MSCCSP and the MSCCSP staff distributed the survey to the other criminal justice practitioners noted above. A total of 223 survey invitations were sent and a completed survey was received from 103 respondents (46.2%).

The MSCCSP staff presented to the Commission at its December 8, 2020, business meeting a report summarizing findings from the survey and providing a list of actions the MSCCSP initiated or completed in 2020 in response to the survey. These actions include the following:

- Worked with the Office of Academic Computing Services at the University of Maryland to amend the MSCCSP website to include a flyout menu on the website homepage so users can quickly assess information available on each website page.

- Amended the MSCCSP website homepage menu to include a direct link to training materials.
- Initiated work with University of Maryland programmers and an outside consultant to redesign the MSCCSP website to make it mobile friendly so the site renders properly whether accessed on a desktop, laptop, tablet, or mobile phone.
- Developed a work-order request for DPSCS programmers to similarly redesign MAGS to make it mobile friendly so the application renders properly whether accessed on a desktop, laptop, tablet, or mobile phone.
- Increased availability of sentencing guidelines training by providing multiple online webinars, and posted a webinar recording to the [MSCCSP YouTube channel](#) so the training can be accessed on-demand.
- Updated the guidelines training webinar to provide instruction and clarification regarding some of the issues and topics raised by the survey respondents.
- Responded to requests for more reports on sentencing trends by publishing periodic *Sentencing Snapshot* reports.
- Added respondents to the *Guidelines E-News* distribution list in response to those who cited lack of awareness of recent guidelines updates.
- Followed up with respondents who provided their contact information and had specific questions or concerns for staff.

## SENTENCES REPORTED IN FY 2020

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 2020, the MSCCSP received sentencing guidelines worksheets for 7,768 sentencing events.<sup>6</sup> The number of worksheets received was notably lower than a typical year due to the impact of the COVID-19 pandemic on court operations. Nearly all of the fiscal year 2020 worksheets (93.6%) were submitted electronically using MAGS.<sup>7</sup> The remaining 6.4% 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 2020 by judicial circuit. Image 4 identifies the individual jurisdictions in each judicial circuit. The Third Circuit (Baltimore and Harford Counties) submitted the largest number of sentencing guidelines worksheets (1,642), while the Second Circuit (Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties) submitted the fewest (439).

In fiscal year 2020, the MSCCSP staff, in combination with staff at the AOC, the Montgomery County Circuit Court, and the Prince George's County Circuit Court, identified 8,525 guidelines-eligible cases and received a paper worksheet or MAGS submission for 8,122 (95.3%) of the

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<sup>6</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>7</sup> Twenty-three of the 24 jurisdictions utilized MAGS for the entirety of fiscal year 2020. Baltimore City deployed MAGS three months into the fiscal year on October 1, 2019.

guidelines-eligible cases.<sup>8</sup> The sixth column of Table 6 indicates the percentage of guidelines-eligible cases with a submitted worksheet in fiscal year 2020 by judicial circuit. Worksheet submission rates ranged from 86.9% to 99.8% for individual circuits. There is variability in worksheet submission rates when looking at individual jurisdictions within each circuit. As Figure 4 illustrates, the number of criminal sentencings has fluctuated, while worksheet submission rates have increased, each year since the implementation of MAGS. With the statewide deployment of MAGS completed in October 2019, the MSCCSP anticipates that worksheet submission rates will continue to near 100 percent.

**Table 6. Number and Percentage of Sentencing Guidelines Worksheets and Cases Submitted by Circuit, Fiscal Year 2020**

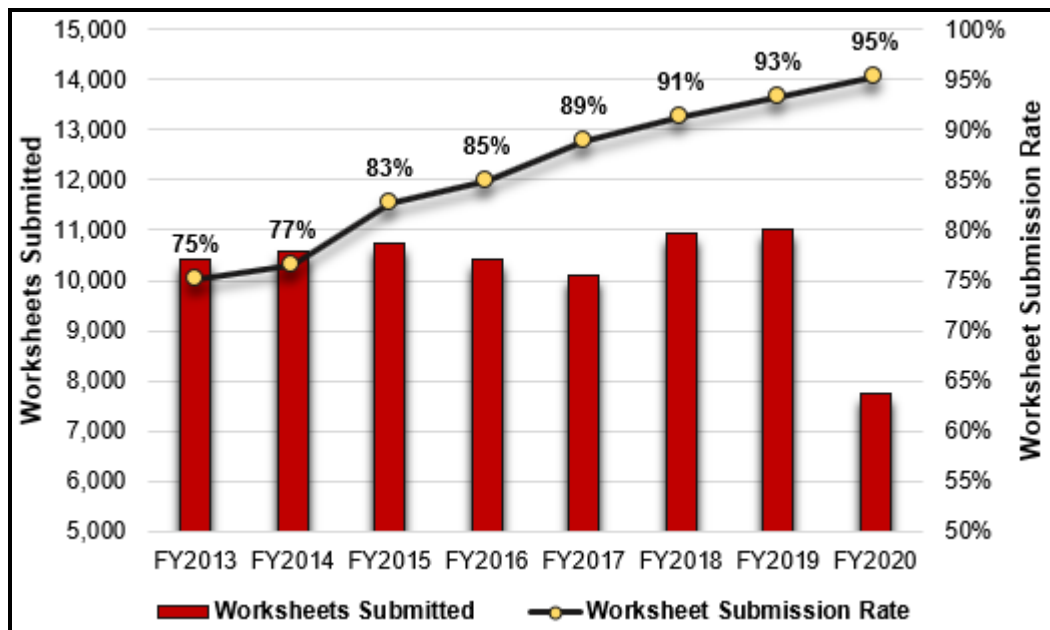
<b>Circuit</b>	<b>Number of Worksheets Submitted</b>	<b>Percent of Total Worksheets Submitted</b>	<b>Number of Guidelines-Eligible Cases Submitted<sup>8</sup></b>	<b>Total Number of Guidelines-Eligible Cases<sup>8</sup></b>	<b>Percent of Guidelines-Eligible Cases with Submitted Worksheet<sup>9</sup></b>
1	450	5.8%	456	476	95.8%
2	439	5.7%	466	467	99.8%
3	1,642	21.1%	1,689	1,755	96.2%
4	462	5.9%	484	519	93.3%
5	1,023	13.2%	1,076	1,089	98.8%
6	1,041	13.4%	1,072	1,074	99.8%
7	1,131	14.6%	1,196	1,377	86.9%
8 <sup>10</sup>	1,580	20.3%	1,683	1,768	95.2%
<b>TOTAL</b>	<b>7,768</b>	<b>100.0%</b>	<b>8,122</b>	<b>8,525</b>	<b>95.3%</b>

<sup>8</sup> Whereas the majority of this section refers to worksheets or sentencing events which may consist of several case numbers, a guidelines-eligible case is defined as one unique case number. Because case numbers, rather than sentencing events, are used to compute the number of guidelines-eligible cases, the number of guidelines-eligible cases received is greater than the total number of worksheets received in fiscal year 2020.

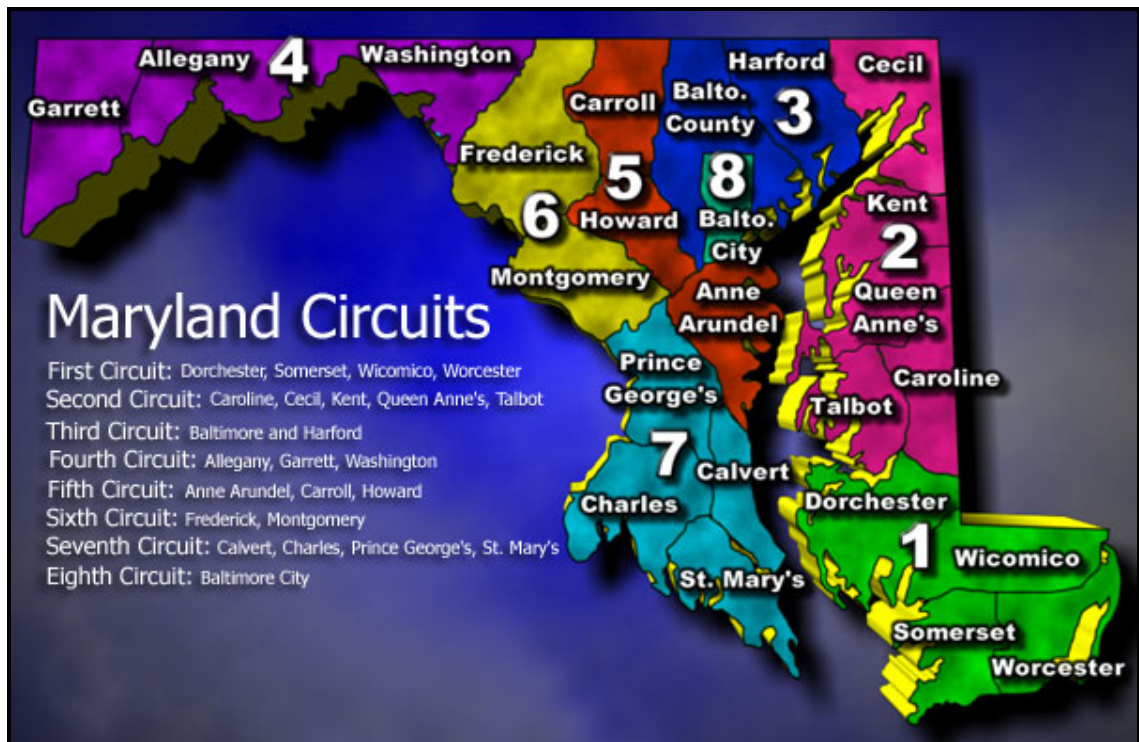
<sup>9</sup> The circuit courts in Montgomery and Prince George's Counties identified guidelines-eligible cases using data from their individual case management systems. The AOC identified eligible cases in Baltimore City using mainframe data. Eligible cases in all other jurisdictions were identified by the AOC using data entered in the Uniform Court System (UCS) and Maryland Electronic Courts (MDEC).

<sup>10</sup> MAGS was deployed for a portion of the specified report year (FY 2020) in the circuit court of this judicial circuit. See Appendix F for specific deployment dates.

**Figure 4. Number and Percentage of Sentencing Guidelines Worksheets Submitted by Fiscal Year, Fiscal Years 2013 through 2020**



**Image 4. Maryland Judicial Circuits**

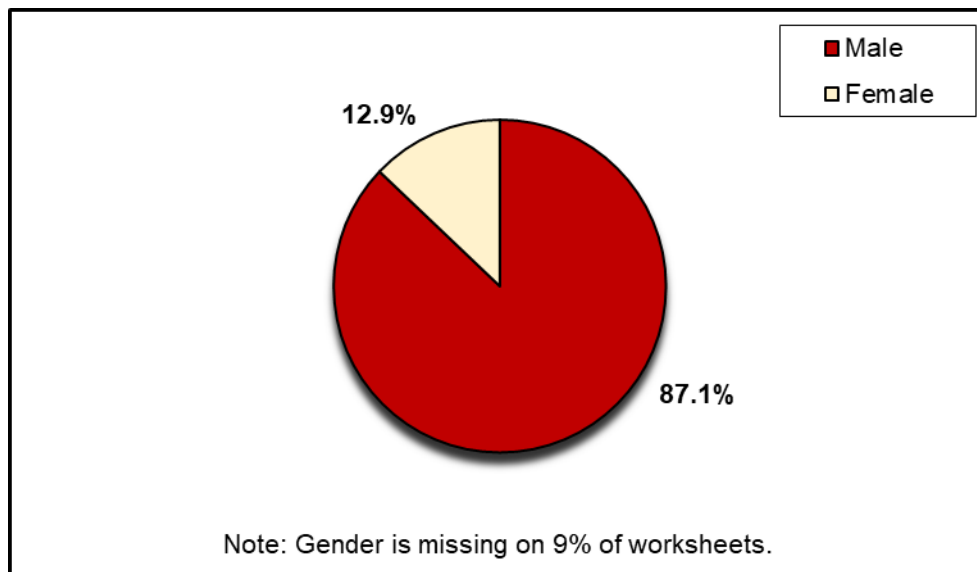


Source: <http://www.courts.state.md.us/clerks/circuitmap2.jpg> (extracted December 2010)

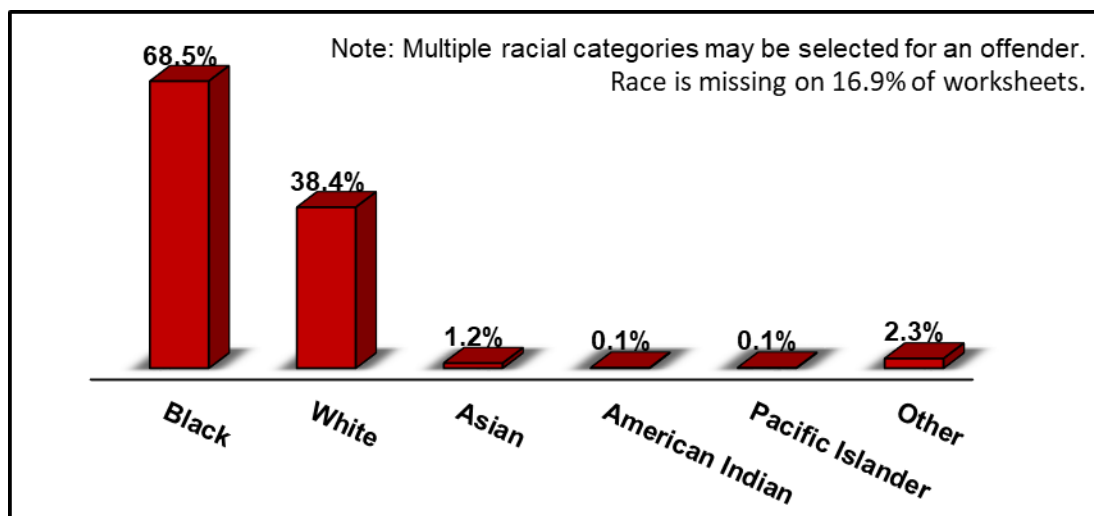
## Guidelines Sentencing Event Characteristics

Figures 5 through 9 summarize the descriptive characteristics from the 7,768 sentencing guidelines worksheets submitted for offenders sentenced in fiscal year 2020. Most offenders were male (87.1%) and African-American (68.5%). Approximately 7% of offenders were of Hispanic or Latino origin. The median age of offenders at the date of the offense was 29 years. The youngest offender was 15, while the oldest was 85 years of age. Approximately 2% of offenders were under 18 years of age; 23% were 18-22 years old; 31% were 23-30 years old; 24% were 31-40 years old; and the remaining 20% were 41 years or older. The most common type of legal representation for offenders was a public defender (53.7%), followed by a private defense attorney (43.6%). Fewer than 3% of offenders received court appointed representation or represented themselves.

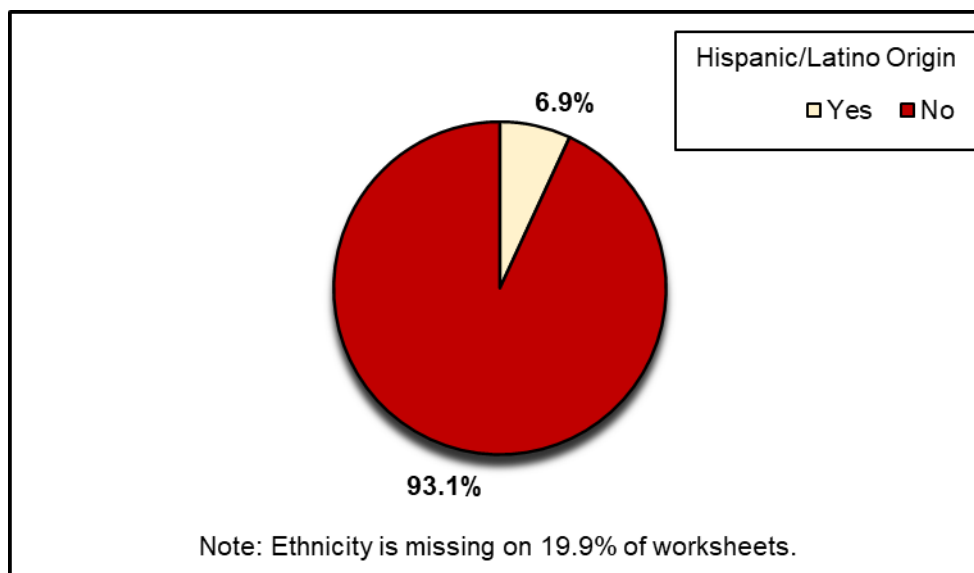
**Figure 5. Distribution of Guidelines Sentencing Events by Gender of Offender, Fiscal Year 2020**



**Figure 6. Distribution of Guidelines Sentencing Events by Race of Offender, Fiscal Year 2020<sup>11</sup>**

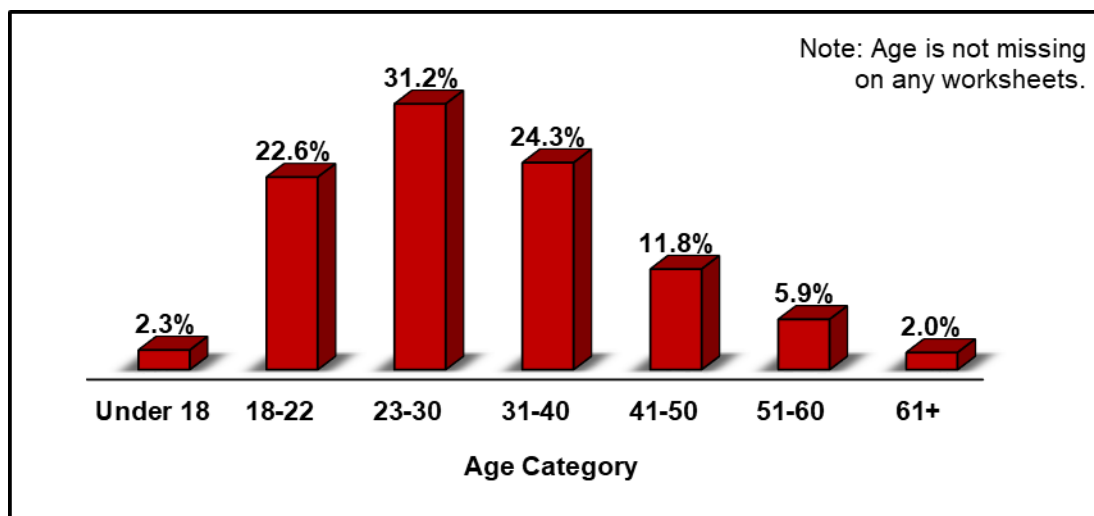


**Figure 7. Distribution of Guidelines Sentencing Events by Ethnicity of Offender, Fiscal Year 2020**

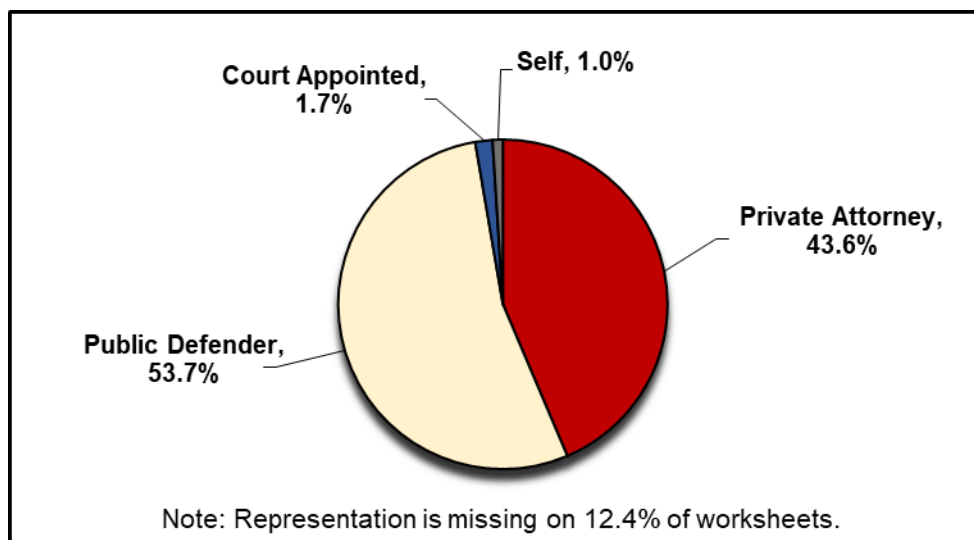


<sup>11</sup> The racial categories on the sentencing guidelines worksheets are consistent with the requirements specified in State Government Article (SG), § 10-603. Effective July 1, 2019, the worksheet permits multiracial responses.

**Figure 8. Distribution of Guidelines Sentencing Events by Age of Offender, Fiscal Year 2020**



**Figure 9. Distribution of Guidelines Sentencing Events by Type of Legal Representation of Offender, Fiscal Year 2020**

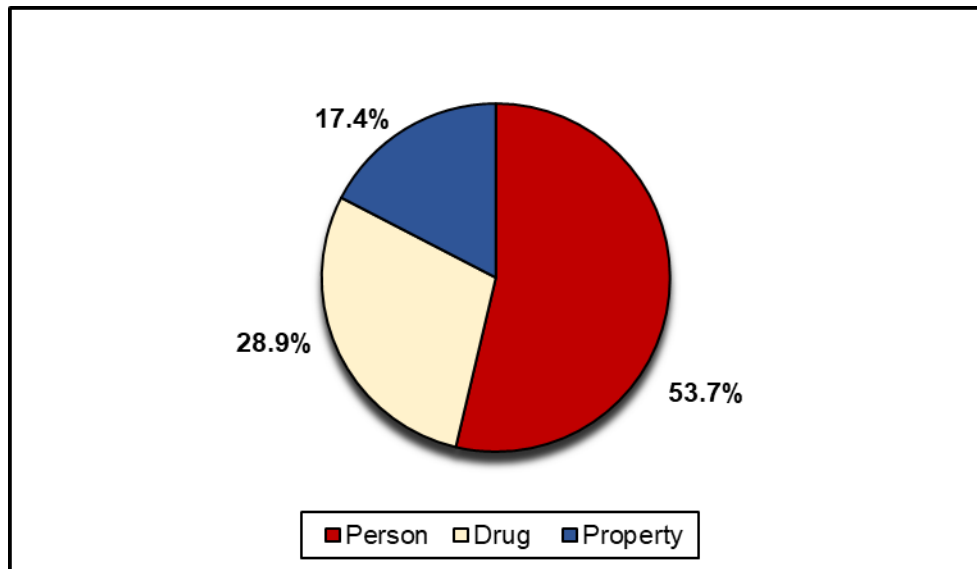


Figures 10 through 16 and Tables 7 through 8 show the distribution of guidelines sentencing events by crime category, seriousness category, components of the offender score, components of the offense score, disposition type, and sentence type. Note that the total number of sentencing events from which the figures and corresponding percentages derive excludes reconsiderations and three-judge panel reviews (N=205).

Figure 10 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 (53.7%), followed by

those involving a drug offense (28.9%). In 17.4% 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 (58.9% person, 25.8% drug, 15.3% property).<sup>12</sup>

**Figure 10. Distribution of Guidelines Sentencing Events by Crime Category, Fiscal Year 2020**



Figures 11a, 11b, and 11c 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 (36.3%), followed by offenses with a seriousness category III (16.8%). The most frequent offenses were *second degree assault* (V), *robbery* (IV), *wear, carry, or transport a handgun* (VII), *robbery with a dangerous weapon* (III), and *possession of a regulated firearm by a restricted person* (VI).

<sup>12</sup> Incarceration includes home detention and credited time, as well as post-sentence jail/prison time.

**Figure 11a. Distribution of Person Offenses by Seriousness Category, Fiscal Year 2020**

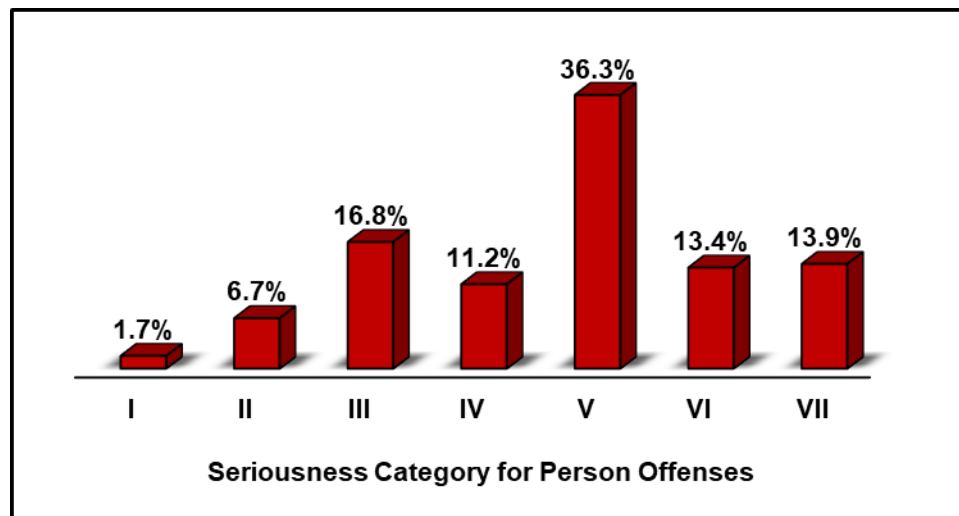


Figure 11b summarizes the distribution of drug offenses by seriousness category. Offenses with seriousness categories IIIB (50.7%), VII (26.5%), and IV (21.2%) were most common. The most frequent drug offenses were *distribution of cocaine* (IIIB), *distribution of marijuana* (IV), *distribution of heroin* (IIIB), *possession of marijuana* (VII), and *possession of cocaine* (VII).

**Figure 11b. Distribution of Drug Offenses by Seriousness Category, Fiscal Year 2020**

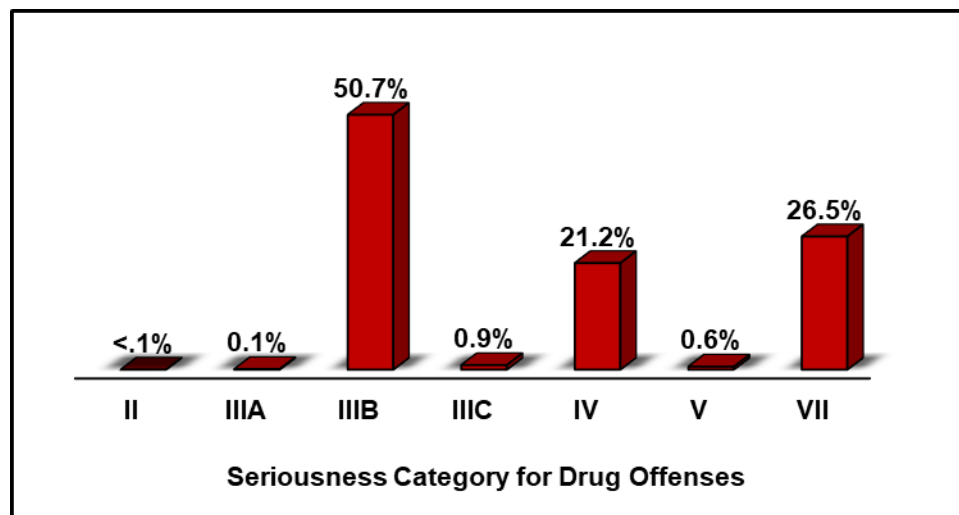


Figure 11c provides the distribution of property offenses by seriousness category. Offenses with a seriousness category VII were most common (35.3%). In contrast, there were no property offenses with a seriousness category II in fiscal year 2020. The most frequent property offenses were *first degree burglary* (III), *theft or theft scheme of at least \$1,500 but less than \$25,000* (VI), *second degree burglary* (IV), and *fourth degree burglary* (VII).

**Figure 11c. Distribution of Property Offenses by Seriousness Category, Fiscal Year 2020**

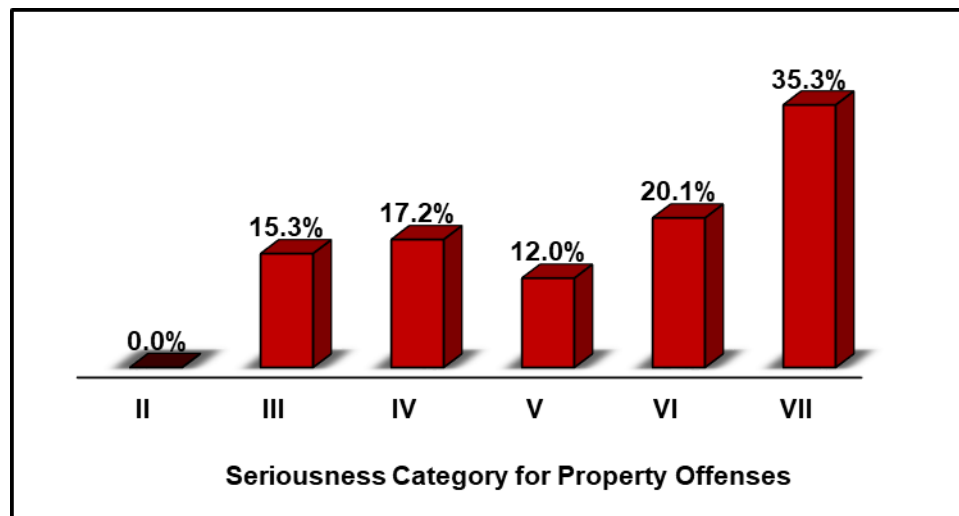


Table 7 shows the distribution of guidelines sentencing events by the four components of the offender score. The offender score provides a measure of the defendant's prior criminal history and ranges from 0 to 9. Table 8 displays the distribution of person offenses by the four components of the offense 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>13</sup>

<sup>13</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 2020**

Offender Score Component		Percent of Offenders
Relationship to CJS When Offense Occurred	0 = None or pending cases	75.3%
	1 = Court or other criminal justice supervision	24.7%
Juvenile Delinquency	0 = 23 years or older <b>or</b> 0 findings of a delinquent act w/in 5 years of the date of the offense	93.6%
	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	4.3%
	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	2.1%
Prior Adult Criminal Record <sup>14</sup>	0 = None	34.4%
	1 = Minor	23.0%
	3 = Moderate	21.2%
	5 = Major	21.3%
Prior Adult Parole/ Probation Violation	0 = No	74.4%
	1 = Yes	25.6%
AVERAGE TOTAL OFFENDER SCORE = 2.52 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 2020 was 2.52. The median or middle score was 2. Nearly one-third (30.6%) 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 justice system when the instant offense occurred (75.3%). Similarly, 74.4% had no prior adult parole or probation violations, and only 6.4% received points for a juvenile record. Greater

<sup>14</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 3.1% of electronic guidelines worksheets in fiscal year 2020.

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 (23%), moderate (21.2%), and major (21.3%) prior adult criminal record categories.

**Table 8. Distribution of Person Offenses by Offense Score, Fiscal Year 2020**

Offense Score Component		Percent of Offenders
Seriousness Category	1 = V – VII	63.4%
	3 = IV	11.3%
	5 = III	16.9%
	8 = II	6.8%
	10 = I	1.7%
Victim Injury	0 = No injury	61.2%
	1 = Injury, non-permanent	27.6%
	2 = Permanent injury or death	11.2%
Weapon Presence	0 = No weapon	43.9%
	1 = Weapon other than firearm	17.5%
	2 = Firearm or explosive	38.6%
Special Victim Vulnerability	0 = No	89.3%
	1 = Yes	10.7%
AVERAGE TOTAL OFFENSE SCORE = 4.08 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 2020 was 4.08. The median or middle score was 3. The majority of person offenses (63.4%) had a seriousness category of V, VI, or VII. Approximately 61% of person offenses involved no injury to the victim, although more than half (56.1%) involved a weapon. Finally, 10.7% 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 12 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>15</sup> (48.9%) or a non-ABA plea agreement (33.5%). An additional 12.8% were resolved by a plea with no agreement, and 4.7% of sentencing events were resolved by either a bench or jury trial (.8% and 3.9%, respectively).

**Figure 12. Distribution of Guidelines Sentencing Events by Disposition, Fiscal Year 2020**

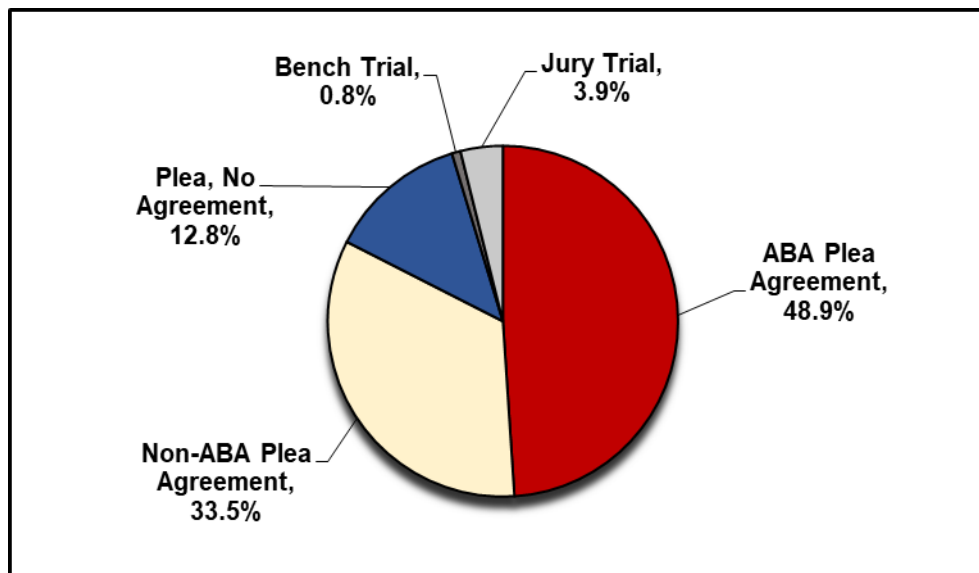
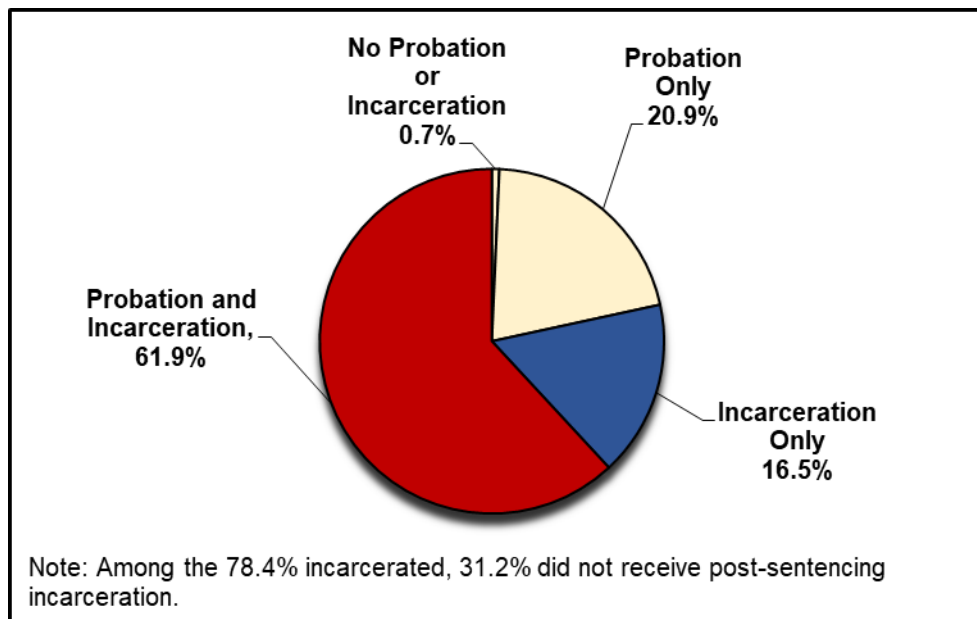


Figure 13 displays the distribution of guidelines sentencing events by sentence type. Note that incarceration includes home detention and credited time, as well as post-sentence jail/prison time. Few offenders (.7%) received a sentence that did not include either incarceration or probation. One-fifth (20.9%) received sentences to probation only. Similarly, 16.5% of offenders received sentences to incarceration only. More than half (61.9%) of all sentencing events resulted in a sentence to both incarceration and probation. Among those incarcerated, 31.2% did not receive post-sentencing incarceration.

<sup>15</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 13. Distribution of Guidelines Sentencing Events by Sentence Type, Fiscal Year 2020**



Figures 14a and 14b 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 (2011-2020), 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 14a indicates that the percentage of offenders sentenced to incarceration was highest in fiscal year 2019 (78.5%) and lowest in fiscal year 2015 (75%). The overall incarceration rate was consistent from fiscal year 2019 to fiscal year 2020, decreasing just .1 percentage point to 78.4%. However, the percentage of offenders incarcerated post-sentence was at its lowest in fiscal year 2020, dropping to 54% from 55.5% in fiscal year 2019.

**Figure 14a. Incarceration Rates for Guidelines Sentencing Events, by Fiscal Year**

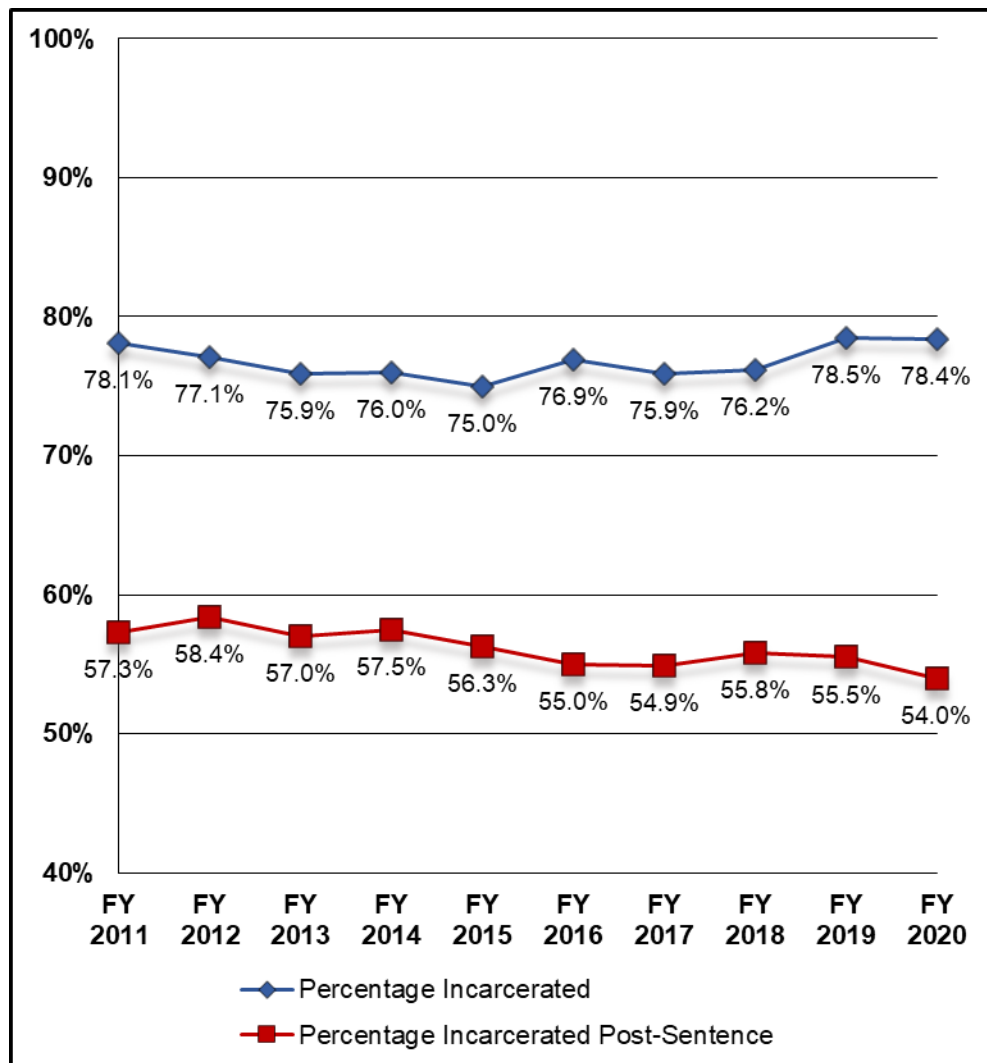


Figure 14b indicates that the typical sentence length among those incarcerated was relatively stable during the ten-year period. The mean (average) sentence ranged from a low of 4.2 years in fiscal years 2011 and 2013 to a high of 4.7 years in fiscal year 2012. Sentence lengths decreased in the past fiscal year from 4.5 years to 4.3 years, with the median (middle) sentence remaining unchanged at its lowest point (1 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 14a and 14b indicate that while the percentage of offenders incarcerated during the ten-year period neared its highest point in fiscal year 2020, the rate of post-sentence incarceration was at its lowest point in fiscal year 2020. Further, sentence lengths, as measured by the median (middle) sentence, remained at their lowest point in fiscal year 2020 (unchanged from fiscal year 2019).

**Figure 14b. Length of Sentence for Guidelines Sentencing Events by Fiscal Year**

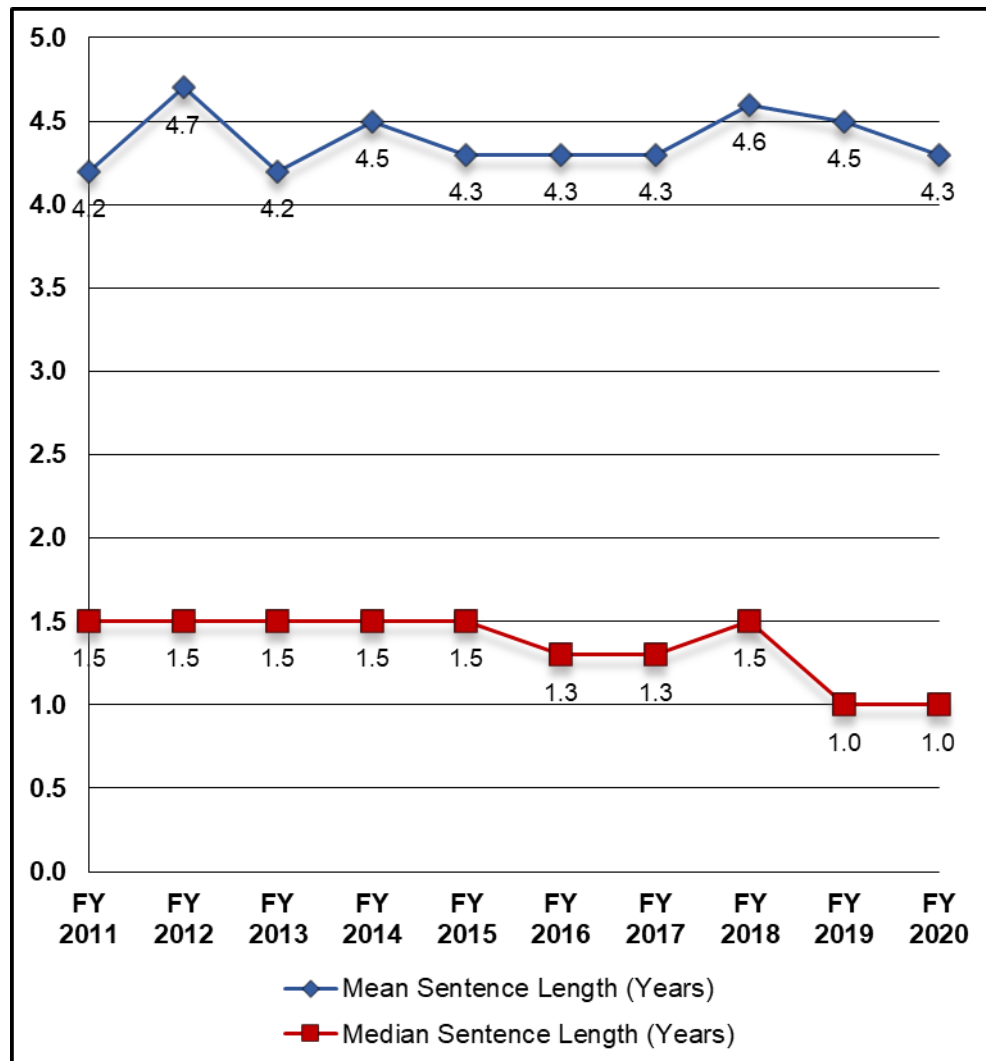
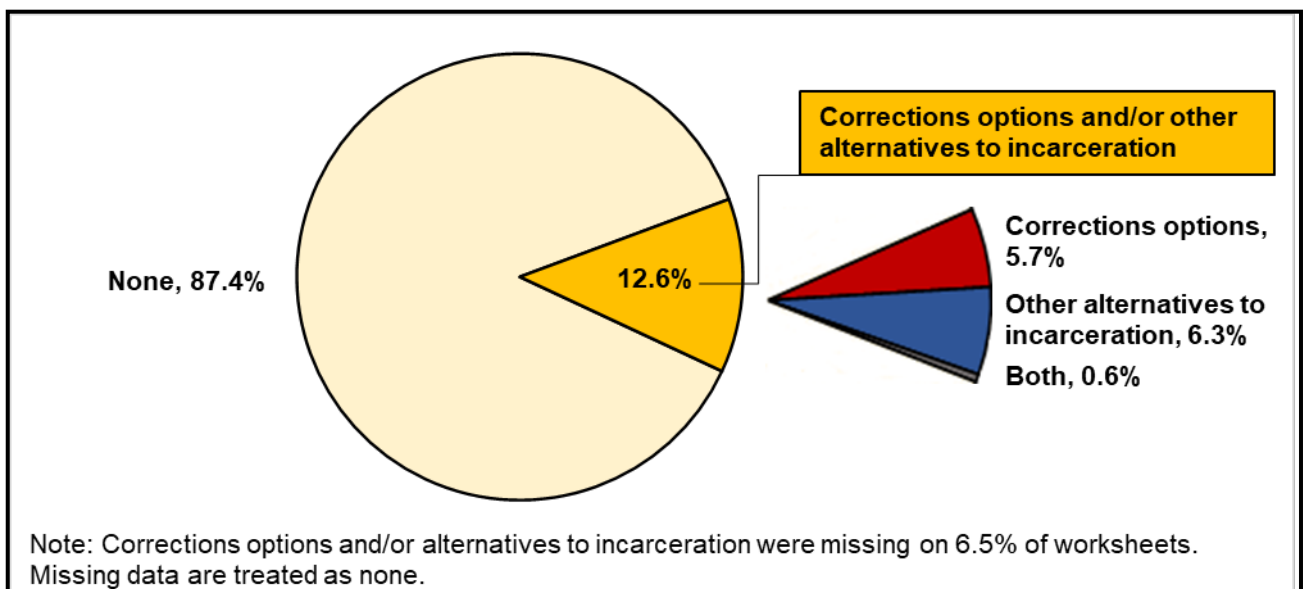


Figure 15 displays the percentage of sentencing events that utilized one or more corrections options or other alternatives to incarceration. Corrections options are defined as home detention, work release, weekend (or other discontinuous) incarceration, inpatient substance abuse treatment, inpatient mental health treatment, a Health General Article (HG), § 8-507 order, a suspended sentence per CR, § 5-601(e), drug court, and other problem-solving courts.<sup>16</sup> Other alternatives to incarceration include outpatient substance abuse treatment, outpatient mental health treatment, and other programs. A defendant's sentence may include multiple corrections options and/or alternatives to incarceration. In fiscal year 2020, 12.6% of guidelines-eligible sentencing events utilized corrections options and/or other alternatives to incarceration with 5.7% of involving corrections options, 6.3% involving other alternatives to incarceration, and less than 1% involving both corrections options and other alternatives to incarceration.<sup>17</sup>

**Figure 15. Corrections Options and Other Alternatives to Incarceration Utilized, Fiscal Year 2020**



<sup>16</sup> The sentencing guidelines worksheet permits users to write-in "other" corrections options. This field was intended to provide users the opportunity to specify corrections options programs, beyond those provided in the definition, involving terms and conditions that constitute the equivalent of confinement. A review of the other corrections options, however, indicates that the other options recorded by the court either did not meet the Commission's criteria or were consistent with one of the defined categories of corrections options. Those other corrections options that were consistent with one of the defined categories of corrections options are included in the totals for the respective categories. Approximately one percent (0.9%) of all sentencing events recorded an "other" corrections option that did not meet the Commission's criteria.

<sup>17</sup> The MSCCSP data may underrepresent the utilization of certain corrections options, specifically drug courts, other problem-solving courts, and HG, § 8-507 commitments. Sentences are often deferred for defendants who participate in drug court and other problem-solving courts, therefore their use is not recorded in the guidelines data. Similarly, HG, § 8-507 commitments are often ordered after the initial sentencing, therefore they are not captured in the MSCCSP's data.

Table 9 details the specific type of corrections options imposed. Among those sentencing events involving one or more corrections options, the most common corrections option utilized was home detention (35.2%), followed by work release (23.6%) and drug court (17.1%).

**Table 9. Corrections Options Utilized, Fiscal Year 2020**

<b>Corrections Options</b>	<b>Percent of Total Sentencing Events</b>	<b>Percent of Sentencing Events that Involve One or More Corrections Options</b>
<i>One or more corrections option imposed</i>	6.3%	---
Home detention	2.2%	35.2%
Work release	1.5%	23.6%
Drug court	1.1%	17.1%
Weekend (or other discontinuous) incarceration	0.7%	10.8%
Inpatient substance abuse treatment	0.4%	6.5%
HG, § 8-507 order	0.2%	3.2%
Suspended sentence per CR, § 5-601(e)	0.1%	2.3%
Inpatient mental health treatment	0.1%	2.1%
Other problem-solving court	0.1%	2.1%

Table 10 details the specific alternatives to incarceration utilized. Outpatient substance abuse treatment was the most common other alternative to incarceration. Over half (60.7%) of sentencing events involving other alternatives to incarceration involved outpatient substance abuse treatment. Among sentencing events involving other alternatives to incarceration, 30.3% of sentencing events involved outpatient mental health treatment. Nearly one-quarter (24%) of sentencing events involving other alternatives to incarceration involved other programs. Commonly cited other programs include sex offender supervision, counseling, and/or treatment, the Abuser Intervention Program, anger management classes, other domestic violence or family counseling programs, job training or educational programs, and parenting classes.

**Table 10. Other Alternatives to Incarceration Utilized, Fiscal Year 2020**

<b>Other Alternatives to Incarceration</b>	<b>Percent of Total Sentencing Events</b>	<b>Percent of Sentencing Events that Involve One or More Other Alternatives to Incarceration</b>
<i>One or more other alternatives to incarceration imposed</i>	6.9%	---
Outpatient substance abuse treatment	4.2%	60.7%
Outpatient mental health treatment	2.1%	30.3%
Other alternatives to incarceration <sup>18</sup>	1.7%	24.0%

<sup>18</sup> Commonly cited other programs include sex offender supervision, counseling, and/or treatment, the Abuser Intervention Program, anger management classes, other domestic violence or family counseling programs, job training or educational programs, and parenting classes.

## JUDICIAL COMPLIANCE WITH MARYLAND'S VOLUNTARY SENTENCING GUIDELINES

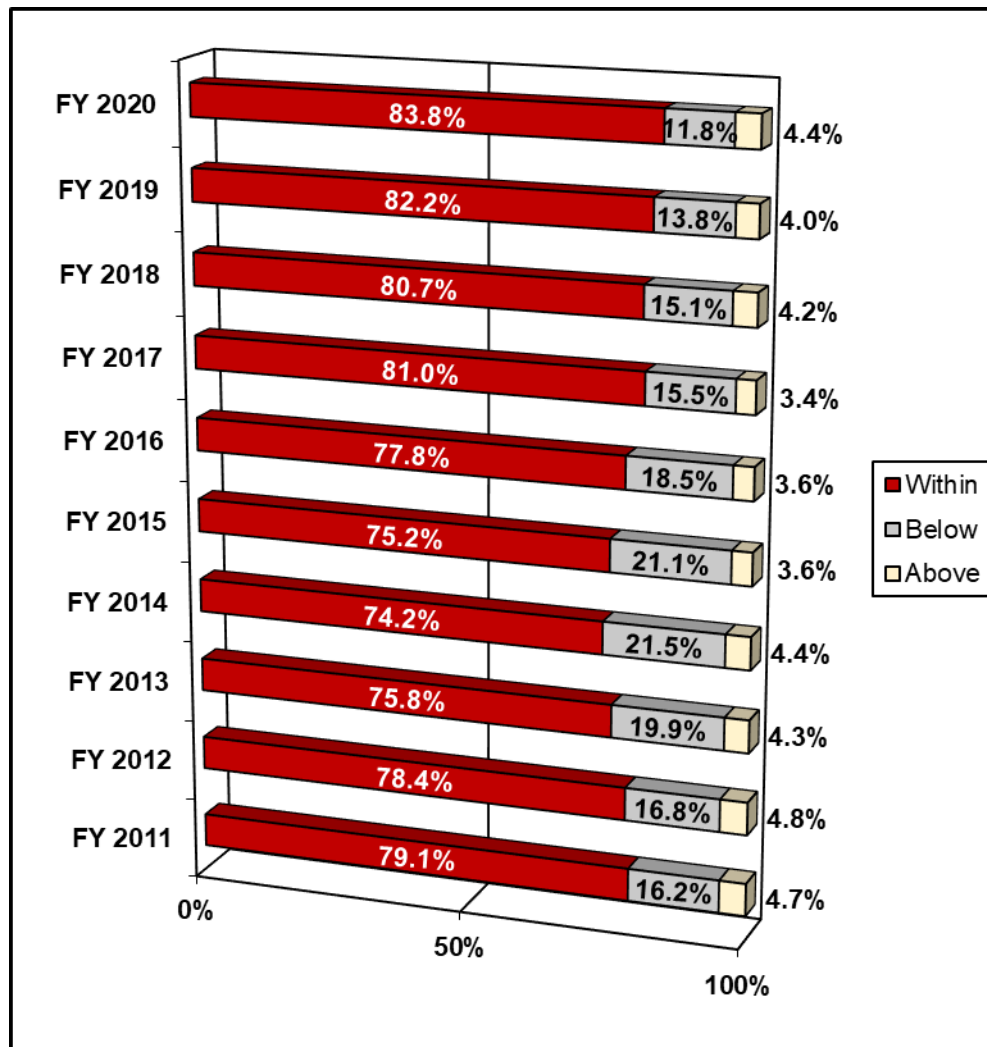
The MSCCSP's governing legislation mandates the Commission to examine judicial compliance based on data extracted from the sentencing guidelines worksheets submitted after circuit courts sentence offenders. The following provides a detailed examination of judicial compliance with Maryland's voluntary 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 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 16 illustrates the overall guidelines compliance rates for the past ten fiscal years (2011-2020). The figure indicates that in all ten years, the overall rate of compliance exceeded the Commission's benchmark standard of 65% compliance. Further, the aggregate compliance rate was highest in fiscal year 2020 (83.8%).

**Figure 16. Overall Sentencing Guidelines Compliance by Fiscal Year  
(All Sentencing Events)**

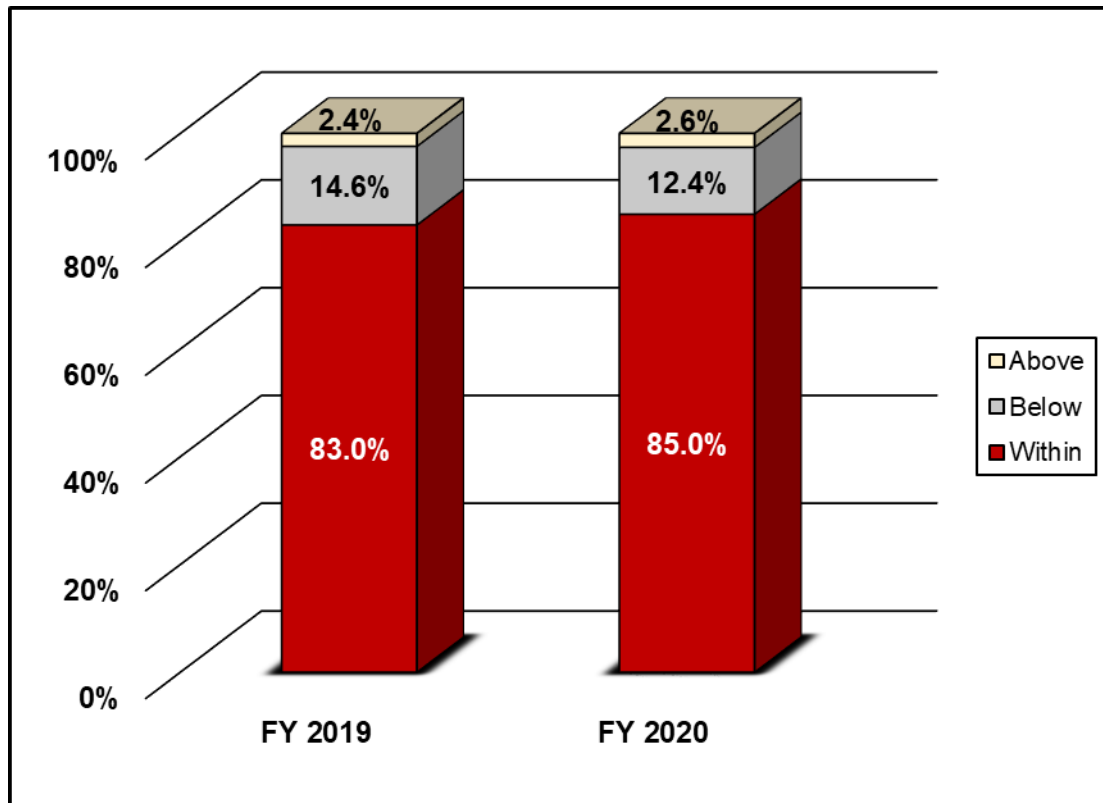


Analyses of judicial compliance in Maryland traditionally focus on sentences for single-count convictions because they permit the most direct comparison of compliance by crime category and by offense type within the applicable cell of the sentencing matrix. Since multiple-count convictions can consist 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 2019 and 2020. Of the 7,768 sentencing guidelines worksheets submitted to the MSCCSP in fiscal year 2020, 5,799 (74.7%) pertained to single-count convictions.

Figure 17 provides the overall guidelines compliance rates for fiscal years 2019 and 2020 based on single-count convictions. The rates are similar to those in Figure 16. 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, with the compliance rate increasing

from 83% in fiscal year 2019 to 85% in fiscal year 2020. When departures occurred, they were more often below the guidelines than above.

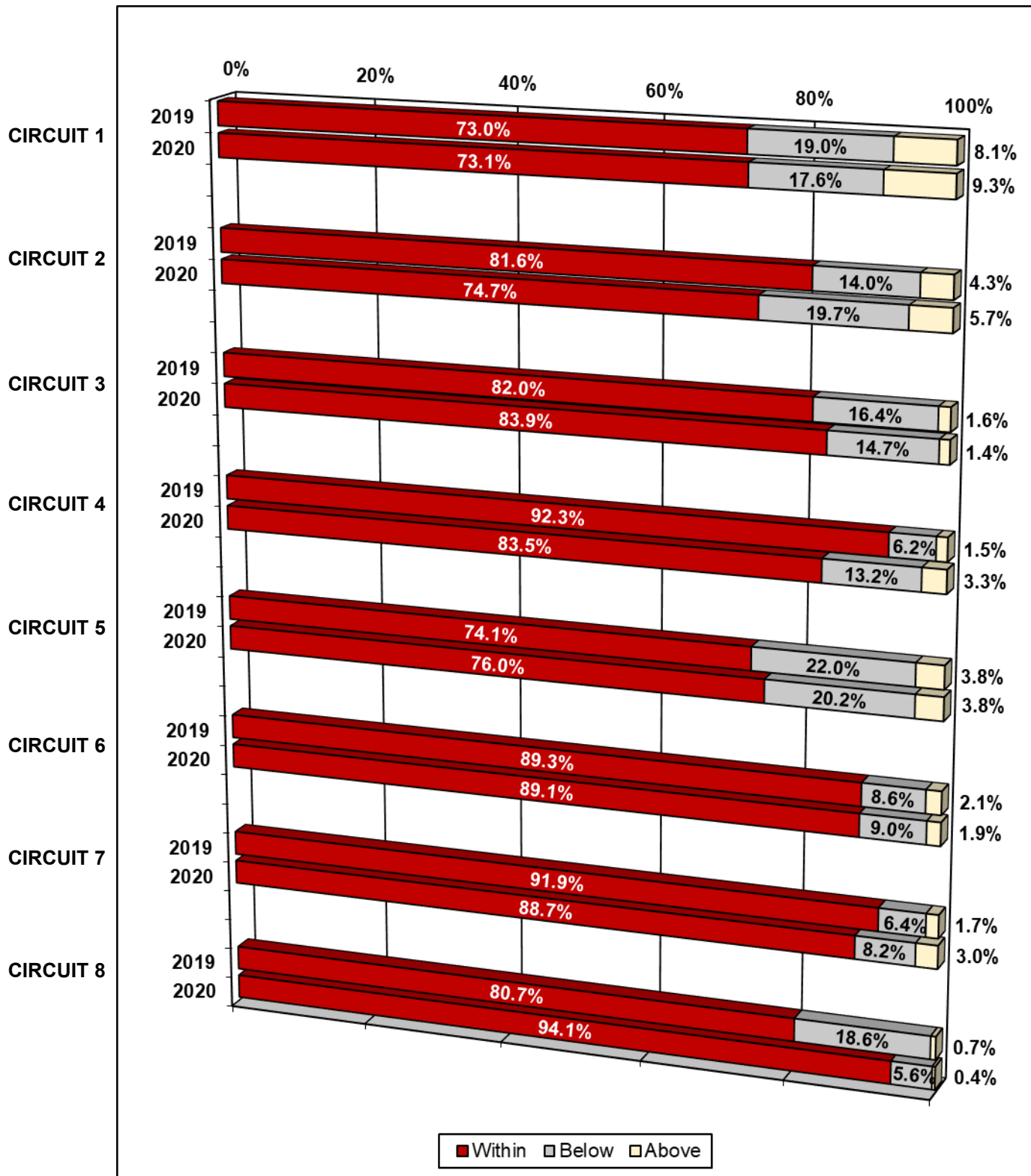
**Figure 17. Overall Sentencing Guidelines Compliance by Fiscal Year  
(Single-Count Convictions)**



### Judicial Compliance Rates by Circuit

As shown in Figure 18, all eight trial court judicial circuits met the 65% compliance benchmark in fiscal year 2020. The Eighth Circuit had the highest compliance rate (94.1%). In contrast, compliance was lowest in the First Circuit (73.1%). The largest change in the compliance rate occurred in the Eighth Circuit, where the rate increased more than 13 percentage points from 80.7% in fiscal year 2019 to 94.1% in fiscal year 2020. This increase can largely be attributed to an increase in the reported use of ABA pleas.

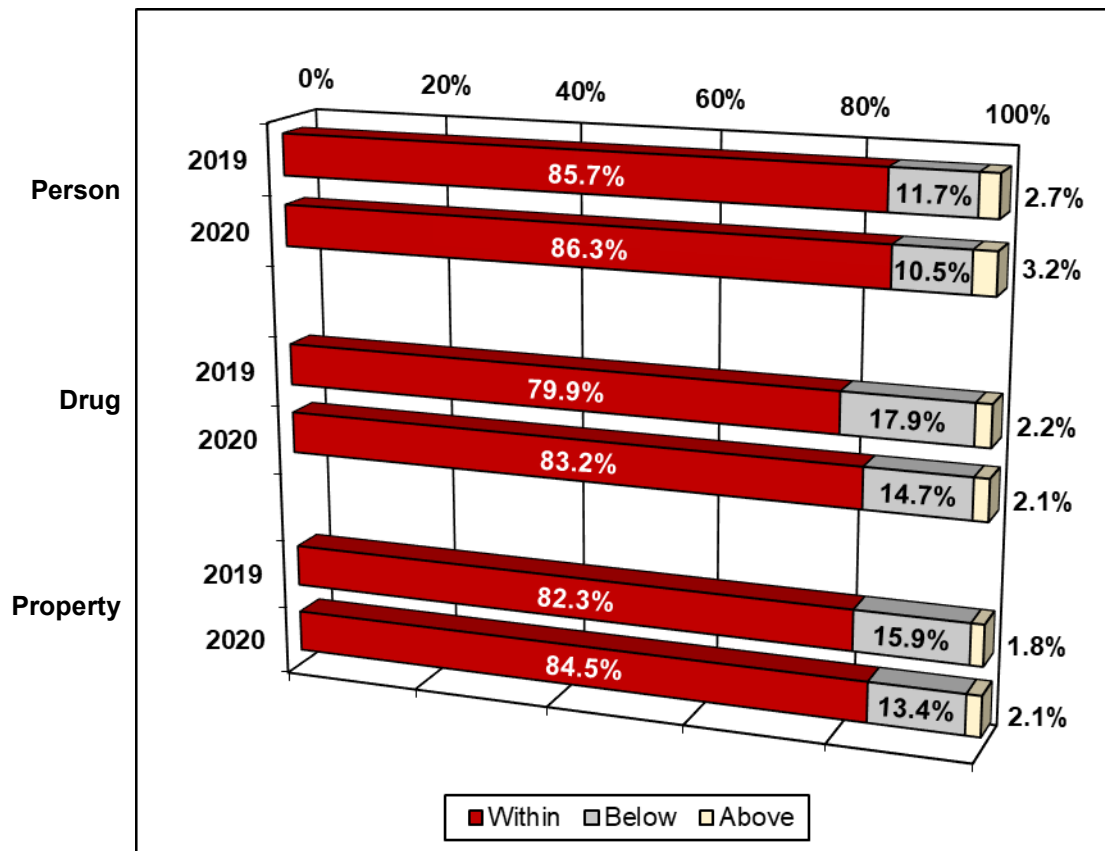
Figure 18. Sentencing Guidelines Compliance by Circuit and Fiscal Year



## Judicial Compliance Rates by Crime Category

Figure 19 shows judicial compliance by crime category for fiscal years 2019 and 2020. Person offenses were the least likely to result in a departure from the guidelines in fiscal year 2020, although differences in compliance rates from one crime category to the next were small. The compliance rate increased slightly from fiscal year 2019 to fiscal year 2020 for each of the crime categories, and the 65% benchmark was met for all three crime categories in both fiscal years.<sup>19</sup>

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

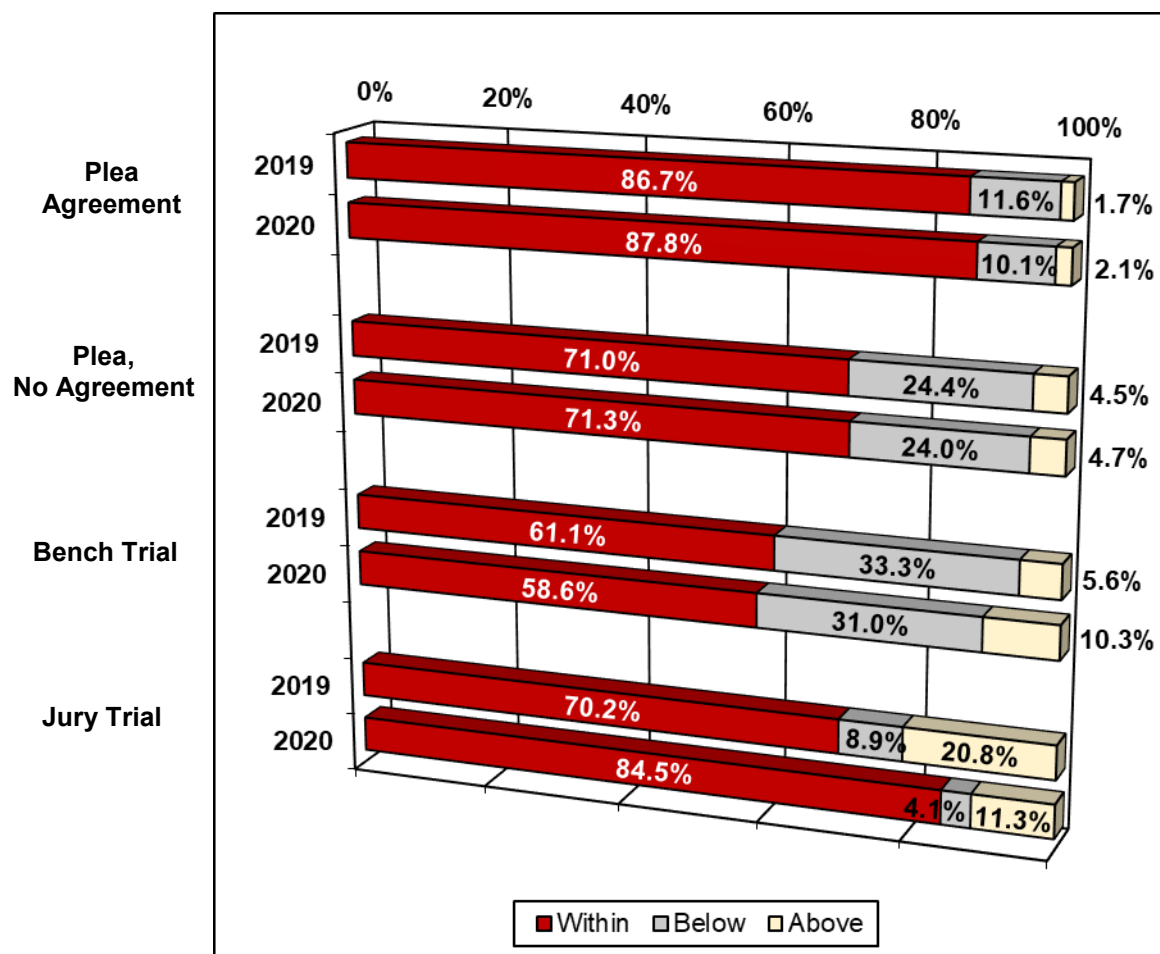


<sup>19</sup> See Appendix C for sentencing guidelines compliance and average sentence for the five most common offenses in each crime category.

## Judicial Compliance Rates by Type of Disposition

Figure 20 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 (87.8%) in fiscal year 2020. 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 (58.6%), falling below the benchmark of 65% compliance. Sentencing events resolved by a bench trial also saw the largest percentage of downward departures (31%). Finally, jury trials saw the largest increase in compliance from fiscal year 2019 (70.2%) to fiscal year 2020 (84.5%) and were the only disposition type where upward departures occurred more often than downward departures.

**Figure 20. Sentencing Guidelines Compliance by Type of Disposition and Fiscal Year**



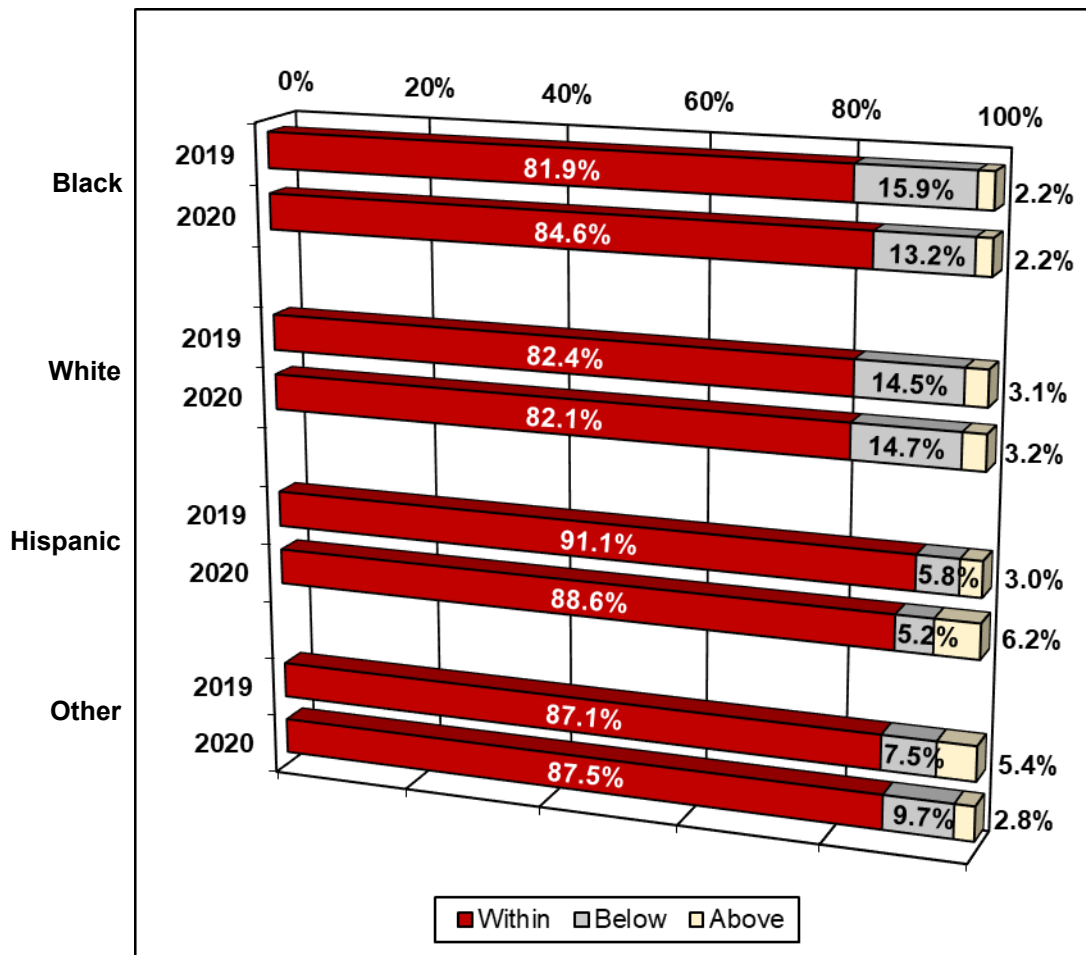
## Judicial Compliance Rates by Offender Race/Ethnicity

Figure 21 displays compliance rates by offender race/ethnicity for fiscal year 2020. Consistent with the requirements specified in SG, § 10-603, the sentencing guidelines worksheet provides for the following defendant racial categories: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or other Pacific Islander, and White. Prior to July 1, 2019, racial categories on the worksheet were mutually exclusive, permitting selection of no more than a single category. Effective July 1, 2019, the sentencing guidelines worksheet permits multiracial responses. Additionally, per the requirements specified in SG, § 10-603, the worksheet includes a separate question about whether the defendant is of Hispanic or Latino origin.

For the purposes of the analysis presented here, the racial categories American Indian/Alaska Native, Asian, and Native Hawaiian/other Pacific Islander were combined in a single category labeled “Other.” This was done because of the small number of cases in each of these racial groups. In addition, because there were fewer than 1% of defendants with multiple racial categories indicated, they too were included in the category labeled “Other.” Lastly, defendants identified as being of Hispanic or Latino origin in the separate ethnicity question were labeled “Hispanic” regardless of the racial category selected.

Figure 21 indicates that compliance rates in both fiscal years were similar across race/ethnicity categories, and all rates exceeded the 65% benchmark. In fiscal year 2020, guidelines compliance ranged from 82.1% for White defendants to 88.6% for Hispanic defendants. Downward departures were highest among White defendants and lowest among Hispanic defendants, while upward departures were highest among Hispanic defendants and lowest among Black or African American defendants.

**Figure 21. Sentencing Guidelines Compliance by Offender Race/Ethnicity, Fiscal Year 2020**



## 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 2020, 850 (15%) of 5,659 single-count guidelines-eligible sentencing events resulted in a departure from the sentencing

guidelines. The reason for departure was provided in 95.8% of these fiscal year 2020 departure cases. This represents a significant increase in reporting from fiscal year 2019 (76.6%). 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 ensure the collection of reasons for all departures, 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 11 and 12 display the reasons given for departures from the guidelines in fiscal year 2020. The tables include the reasons listed on the reference card as well as the majority of the "other" cited reasons. Table 11 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 fewer than 5% 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 11. Departure Reasons for Sentencing Events Below the Guidelines, Fiscal Year 2020<sup>20</sup>**

<b>Mitigating Reasons</b>	<b>Percent of Departures Where Reason is Cited</b>
<i>No Departure Reason Given</i>	4.7%
The parties reached a plea agreement that called for a reduced sentence	42.5%
Recommendation of State's Attorney or Division of Parole and Probation	41.5%
Offender's commitment to substance abuse treatment or other therapeutic program	9.7%
Offender made restorative efforts after the offense	6.0%
Judicial discretion	3.1%
Offender's minor role in the offense	3.1%
Nature/circumstances of the offense	2.6%

<sup>20</sup> Each sentencing event may cite multiple reasons.

<b>Mitigating Reasons</b>	<b>Percent of Departures Where Reason is Cited</b>
Victim's participation in the offense lessens the offender's culpability	2.3%
Offender's prior criminal record not significant	1.6%
Offender serving or facing sentence in another case	1.4%
Offender had diminished capability for judgment	1.4%
Offender's age/health	1.0%
Weak facts of the case	1.0%
Victim requested a more lenient sentence	0.7%
Victim unavailable or not willing to cooperate	0.7%
Offender moved or facing deportation	0.7%
Allow offender to maintain employment/provide for dependents	0.6%
Offender cooperated with authorities	0.4%
Offender participating in vocational/life skills training	0.4%
Offender entered plea of not guilty	0.4%
Offender was influenced by coercion or duress	0.4%
Offender expressed remorse	0.3%
Offender waived credit for time served	0.3%
Offender received probation before judgement	0.3%
Other reason (not specified above)	2.4%

Table 12 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 that in only 2% 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) offender's major role in the offense; and 3) the level of harm was excessive.

**Table 12. Departure Reasons for Sentencing Events Above the Guidelines,  
Fiscal Year 2020<sup>21</sup>**

<b>Aggravating Reasons</b>	<b>Percent of Departures Where Reason is Cited</b>
<i>No Departure Reason Given</i>	2%
Recommendation of State's Attorney or Division of Parole and Probation	53.7%
Offender's major role in the offense	18.8%
The level of harm was excessive	16.8%
The vicious or heinous nature of the conduct	14.1%
Special circumstances of the victim	9.4%
Offender exploited a position of trust	8.1%
Offender's significant participation in major controlled substance offense	5.4%
The parties reached a plea agreement	4.7%
Offender committed a "white collar" offense	3.4%
Offender's prior criminal record significant	2.7%
Judicial discretion	2.7%
Nature/circumstances of the offense	1.3%
Other reason (not specified above)	3.4%

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

**ADDITIONAL INFORMATION COLLECTED****Report on Adjustments from Reconsidered Sentences Involving Crimes of Violence**

CP, § 6-209(b)(1)(iii-iv) requires the MSCCSP's annual report to review reductions or increases in original sentences that have occurred because of reconsiderations of sentences<sup>22</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 13 reviews reconsidered sentences reported to the MSCCSP for crimes of violence as defined in CR, § 14-101 for fiscal year 2020 by judicial circuit. Reconsidered sentences were reported for 56 offenders and 119 offenses. *Robbery with a dangerous weapon* (CR, § 3-403) was the most common crime of violence in reconsidered cases reported to the MSCCSP in fiscal year 2020.

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<sup>22</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 13. Reconsiderations for Crimes of Violence (CR, § 14-101), Fiscal Year 2020<sup>23</sup>**

<b>Circuit</b>	<b>Offense</b>	<b>N</b>
SECOND	Murder, 1 <sup>st</sup> Degree, Attempted	1
THIRD	Assault, 1 <sup>st</sup> Degree	3
	Firearm Use in Felony or Crime of Violence	2
	Murder, 2 <sup>nd</sup> Degree	1
	Robbery	3
	Robbery with Dangerous Weapon	1
	Voluntary Manslaughter	1
FOURTH	Robbery	5
FIFTH	Assault, 1 <sup>st</sup> Degree	3
	Continuing Course of Conduct, 1 <sup>st</sup> , 2 <sup>nd</sup> , or 3 <sup>rd</sup> Degree Sex Offense or 1 <sup>st</sup> or 2 <sup>nd</sup> Degree Rape, with Victim Under 14	1
	Firearm Use in Felony or Crime of Violence	2
	Home Invasion	1
	Murder, 2 <sup>nd</sup> Degree	1
	Murder, 2 <sup>nd</sup> Degree, Attempted	1
	Rape, 2 <sup>nd</sup> Degree, with Victim Under 13	1
	Robbery	4
	Robbery with Dangerous Weapon	2
	Sex offense, 2 <sup>nd</sup> Degree	1
	Sex Offense, 2 <sup>nd</sup> Degree, with Victim Under 13	1
SIXTH	Child Abuse, Physical, with Death	2
	Armed Carjacking	1
	Assault, 1 <sup>st</sup> Degree	8
	Firearm Use in Felony or Crime of Violence	4
	Home Invasion	2
	Kidnapping	1
	Rape, 2 <sup>nd</sup> Degree	1
	Robbery	4
	Robbery with Dangerous Weapon	34
	Sex offense, 2 <sup>nd</sup> Degree	2
SEVENTH	Assault, 1 <sup>st</sup> Degree	2
	Firearm Use in Felony or Crime of Violence	1
	Murder, 2 <sup>nd</sup> Degree	1
	Robbery	1
EIGHTH	Assault, 1 <sup>st</sup> Degree	1
	Firearm Use in Felony or Crime of Violence	8
	Murder, 1 <sup>st</sup> Degree, Attempted	2
	Murder, 2 <sup>nd</sup> Degree	2
	Robbery with Dangerous Weapon	6
	Unarmed Carjacking	1

<sup>23</sup> Table 13 identifies reconsidered sentences for 56 offenders and 119 offenses.

## 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>24</sup> In fiscal year 2020, sentencing guidelines worksheets reported 784 sentences for theft, fraud, and related crimes. In 536 (68.4%) of these sentences, an actual dollar amount to indicate the economic loss to the victim was recorded. Unknown amount was marked for 234 (29.8%) of 784 theft and fraud related offenses, and the field was left blank for the remaining 1.8% of sentences. Statewide deployment of MAGS will 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 \$513,997. The mean (average) amount of loss was \$14,790, while the median (middle) amount of loss was \$890. 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

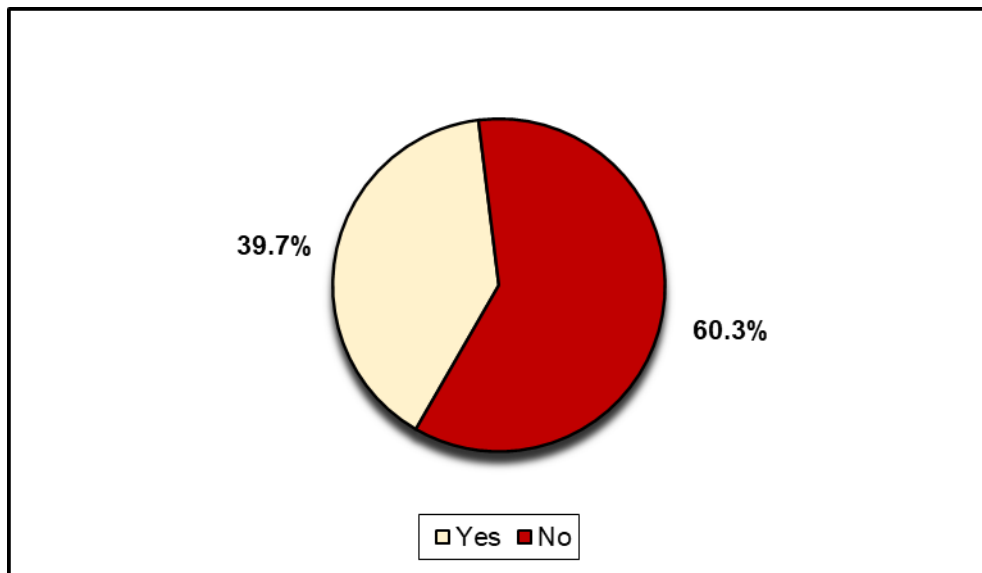
The sentencing guidelines worksheet includes multiple victim-related items to describe the role of victims at sentencing and to ascertain whether victim-related court costs were imposed pursuant to Courts and Judicial Proceedings Article (CJ), § 7-409, Annotated Code of Maryland, and Maryland Rule 4-353. Figures 22 through 24 detail the responses to these items in fiscal year 2020. 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 34.6% of worksheets, and nearly half of all worksheets (47.3%) 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.

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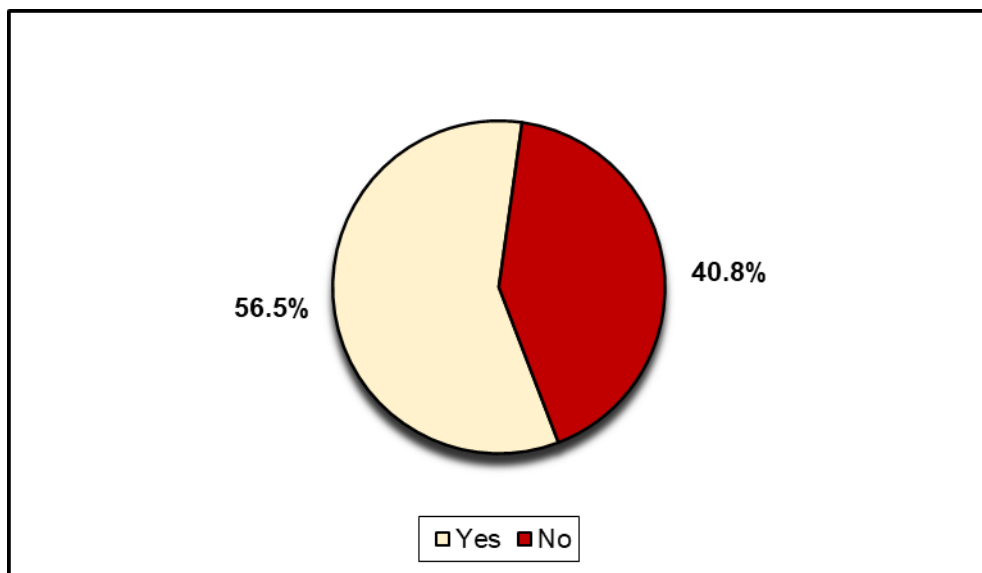
<sup>24</sup> The MSCCSP adopted the following definition of economic loss: the amount of restitution ordered by a circuit court judge or, if not ordered, the full amount of restitution that could have been ordered (COMAR 14.22.01.02B(6-1)).

Figure 22 indicates that victim-related court costs were imposed in 39.7% 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 23 illustrates that 56.5% of worksheets with valid information on the victim-related questions indicated there was a victim.

**Figure 22. Distribution of Guidelines Sentencing Events by Whether Victim-Related Court Costs Imposed, Fiscal Year 2020**

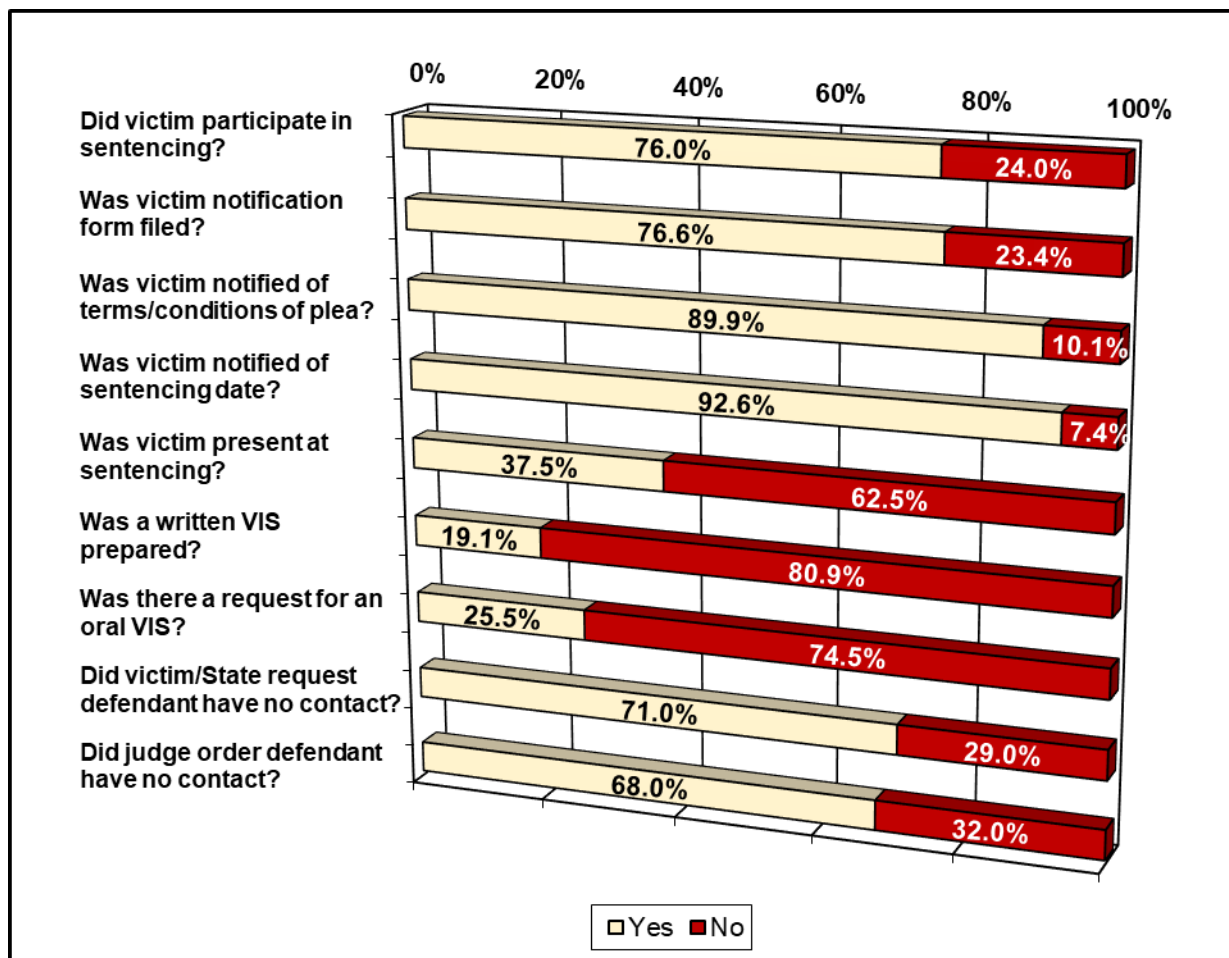


**Figure 23. Distribution of Guidelines Sentencing Events by Whether Victim Involved, Fiscal Year 2020**



The responses to the items in the *Victim Information* section of the worksheet for sentencing events involving a victim are summarized in Figure 24. In 24% 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 76.6% of sentencing events. Most victims (89.9%) were notified of the terms and conditions of a plea agreement prior to entry of a plea. Similarly, 92.6% of victims were notified of the court date for sentencing. Slightly more than one-third of victims were present at sentencing. A written Victim Impact Statement (VIS) was prepared in 19.1% of sentencing events involving a victim, while the victim or State made a request for an oral VIS in 25.5% of sentencing events. Finally, the victim or State made a request that the defendant have no contact with the victim in 71% of sentencing events, and the sentencing judge ordered the defendant to have no contact with the victim in 68% of sentencing events involving a victim.

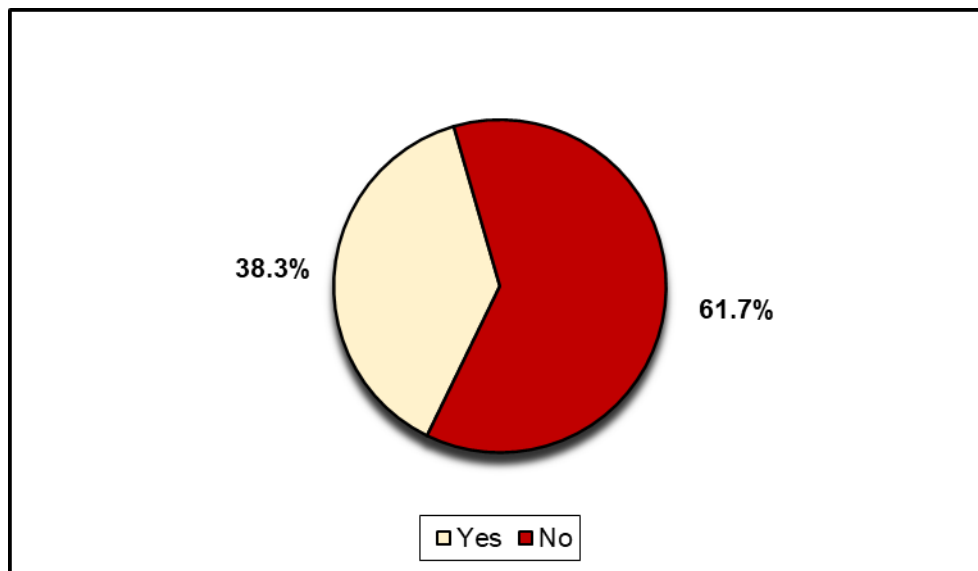
**Figure 24. Distribution of Guidelines Sentencing Events by Victim Information, Fiscal Year 2020**



## 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 2020, 1,309 sentencing guidelines events contained a sentence of confinement 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 84 or 6% of those sentencing events. Figure 25 indicates that among the 1,309 sentencing events with valid data, the announcement was made 38.3% of the time.

**Figure 25. Distribution of Guidelines Sentencing Events by Whether 50% Announcement Was Made, Fiscal Year 2020**



The MSCCSP staff will continue to review this announcement requirement when providing training sessions. Additionally, the statewide deployment of MAGS will 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 2021

The work of the MSCCSP in 2021 will be determined, in part, by emerging policy issues and concerns that develop throughout the course of the year. In addition, the MSCCSP will continue to work on previously initiated activities while also addressing 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. Sentencing guidelines training in 2021 will emphasize the revised instructions regarding guidelines-compliant binding pleas to be adopted effective April 1, 2021. Additionally, the MSCCSP will review all criminal offenses and changes in the criminal code resulting from the 2021 Legislative Session and adopt seriousness categories for these offenses. Finally, the MSCCSP will continue coordination with the AOC to implement a statewide, aggregated worksheet status report.

The MSCCSP has also identified the following list of new activities that the Commission plans to address in 2021:

- Conduct a guidelines compliance cell-by-cell analysis to review the average sentences and guidelines ranges in each cell of the three sentencing guidelines scoring matrices.
- Complete a descriptive analysis of the sentencing guidelines offender and offense score components to assess differences by defendant race.
- Review the prior adult criminal record component of the sentencing guidelines offender score to assess the impact of minor misdemeanor and traffic offenses.
- Review the criminal record decay factor to consider whether the crime-free "clock" should start once an offender is at-risk to reoffend within the community.
- Review the sentencing guidelines seriousness category classifications for possession and distribution of child pornography.
- 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) and consider whether the sentencing guidelines rules should require the upper guidelines limit to be stacked similar to the multiple victim stacking rule.

- Launch a redesigned, mobile-friendly website in 2021 that renders properly whether it is accessed on a PC, MAC, mobile phone, or tablet.
- Work with programmers at DPSCS to release an updated mobile-friendly version of MAGS.

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 2021 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								
<i>Offender Score</i>								
<i>Offense Seriousness Category</i>	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 MAGS 9.0)

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

## Appendix C:

### Sentencing Guidelines Compliance and Average Sentence by Offense Type, Single Count Cases, Fiscal Year 2020 (Most Common Person, Drug, and Property Offenses)

Person Offenses	N	Guidelines Compliance			% Incarc <sup>25</sup>	Average Sentence Among Incarcerated	
		Within	Below	Above		Total Sentence	Total, Less Suspended
Assault, 2 <sup>nd</sup> Degree	820	86.8%	8.7%	4.5%	77.8%	5.6 years	1.4 years
Robbery	275	92%	6.9%	1.1%	87.6%	8.5 years	2.3 years
Possession of Regulated Firearm by Restricted Person	167	83.1%	16.3%	0.6%	89.8%	4.1 years	1.7 years
Assault, 1 <sup>st</sup> Degree	161	73.9%	21.7%	4.3%	96.9%	13.7 years	4.5 years
Robbery with Dangerous Weapon	139	82%	15.8%	2.2%	92.1%	11.2 years	4.1 years
<b>Drug Offenses</b>							
Distribute, PWID, Manufacture, etc. Cocaine	547	77.3%	22.3%	0.4%	79.5%	8.3 years	2.4 years
Distribute, PWID, Manufacture, etc. Marijuana	285	89.8%	9.1%	1.1%	44.6%	3.2 years	0.6 years
Distribute, PWID, Manufacture, etc. Heroin	226	78.3%	20.8%	0.9%	82.3%	8.7 years	2.5 years
Possess Marijuana	181	91.2%	5%	3.9%	23.8%	0.3 years	0.1 years
Possess Cocaine	129	93%	3.9%	3.1%	59.7%	0.7 years	0.3 years
<b>Property Offenses</b>							
Felony Theft or Theft Scheme, At Least \$1,500 but Less Than \$25,000	155	88.4%	9%	2.6%	58.1%	3.9 years	0.9 years
Burglary, 1 <sup>st</sup> Degree	116	85.3%	12.9%	1.7%	81.9%	8.9 years	3 years
Burglary, 2 <sup>nd</sup> Degree	110	85.5%	12.7%	1.8	80.9%	7.4 years	2.9 years
Burglary, 4 <sup>th</sup> Degree	96	78.1%	20.8%	1%	63.5%	2.3 years	0.5 years
Felony Theft or Theft Scheme, At Least \$100 but Less Than \$1,500	66	84.8%	13.6%	1.5%	66.7%	0.5 years	0.3 years

<sup>25</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 <sup>26</sup>	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.

<sup>26</sup> At its December 8, 2020, meeting, the MSCCSP voted to change the name of a guidelines-compliant plea agreement from *ABA plea agreement* to *MSCCSP binding plea agreement* and to revise the definition as follows: *A plea agreement presented to the court in agreement by an attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, that a court has approved relating to a particular sentence and disposition. An MSCCSP binding plea agreement means an agreement to a specific amount of active time (if any), not merely a sentence cap or range. The court has the discretion to accept or reject the plea. The agreement is binding on the court under Maryland Rule 4-243(c) if the court accepts the plea.* The proposed revisions have been submitted to COMAR for promulgation through the review process, with an expected implementation date of April 1, 2021.

## 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