

Maryland State Commission on Criminal Sentencing Policy

Annual Report 2021



University of Maryland
(301) 403-4165 | phone

4511 Knox Road, Suite 309
College Park, MD 20742

mccsp@umd.edu
www.mccsp.org | web



COMMISSION MEMBERS

Members Appointed by the Governor

❖ **Honorable Brett R. Wilson**
Chair

- | | |
|--|--|
| ❖ Richard A. Finci, Esquire
Criminal Defense Attorney | ❖ Alethea P. Miller
Victims' Advocacy Group |
| ❖ Brian D. Johnson, Ph.D.
CJ/Corrections Policy Expert | ❖ Melinda C. Grenier
Local Detention Center |
| ❖ Robert H. Harvey, Jr., Esquire
State's Attorney (8/2021 – Present) | ❖ Kyle E. Scherer, Esquire
Public Representative (8/2021 – Present) |
| ❖ Honorable Brian L. DeLeonardo
State's Attorney (1/2016 – 7/2021) | ❖ Lisa M. Spicknall-Horner
Public Representative |
| ❖ Chief Douglas DeLeaver
Law Enforcement | ❖ William (Willy) E. Koutroumpis
Public Representative (9/2017 – 6/2021) |

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

- | | |
|---|--|
| ❖ Honorable James P. Salmon
Appellate Courts Representative | ❖ Honorable Shannon E. Avery
Vice Chair; Circuit Court |
| ❖ Honorable Patrice E. Lewis
District Court | |

Members Appointed by the President of the Senate

- | | |
|---|--|
| ❖ Honorable Charles E. Sydnor, III
(7/2021 – Present) | ❖ Honorable Delores G. Kelley
(1999 – 7/2021) |
| ❖ Honorable Christopher R. West
(7/2021 – Present) | ❖ Honorable Robert G. Cassilly
(1/2016 – 7/2021) |

Members Appointed by the Speaker of the House

- | | |
|--|--|
| ❖ Honorable David Moon
(1/202 – Present) | ❖ Honorable Luke H. Clippinger
(2/2019 – 6/2021) |
| ❖ Honorable J. Sandy Bartlett
(7/2021 – Present) | |

Ex-Officio Members

- ❖ **Honorable Brian E. Frosh**
(**Kathleen C. Murphy, Esquire, Attorney General's Representative**)
Attorney General
- ❖ **Paul B. DeWolfe, Esquire**
(**Donald E. Zaremba, Esquire, Public Defender's Representative**)
Public Defender
- ❖ **Robert L. Green**
(**Rachel Sessa, Secretary's Representative**)
Secretary of Department of Public Safety & Correctional Services

Maryland State Commission on
Criminal Sentencing Policy

2021 | Annual Report



University of Maryland
4511 Knox Road, Suite 309, College Park, MD 20742
www.msccsp.org



COMMISSION STAFF

- ❖ **David A. Soulé, Ph.D**
Executive Director

- ❖ **Stacy Skroban Najaka, Ph.D**
Research Director

- ❖ **Sarah Bowles**
Program Analyst

- ❖ **Katharine Pembroke**
Administrative/Training Coordinator

- ❖ **Mark Mills (August 2021 – Present)**
Policy Analyst

MSCCSP



Maryland State Commission on Criminal Sentencing Policy

Chair

Hon. Brett R. Wilson

Vice-Chair

Hon. Shannon E. Avery

Commissioners

Del. J. Sandy Bartlett

Chief Douglas DeLeaver

Paul B. DeWolfe, Esq.

Richard A. Finci, Esq.

Hon. Brian E. Frosh

Sec. Robert L. Green

Melinda C. Grenier

Robert H. Harvey, Jr., Esq.

Brian D. Johnson, Ph.D.

Hon. Patrice E. Lewis

Alethea P. Miller

Del. David Moon

Hon. James P. Salmon (Ret.)

Kyle E. Scherer, Esq.

Lisa M. Spicknall-Horner

Sen. Charles E. Sydnor, III

Sen. Chris R. West

Executive Director

David A. Soulé, Ph.D.

January 31, 2022

To: The Honorable Lawrence J. Hogan, Jr., Governor
The Honorable Boyd K. Rutherford, Lt. Governor
The Honorable Joseph M. Getty, 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 2021 Annual Report of the MSCCSP.

This report details the activities of the MSCCSP during this past year, highlighted by the Commission's work to review cell-by-cell guidelines compliance data that culminated in a vote to adopt revisions to the sentencing matrices for drug and property offenses. These revisions are expected to be adopted effective July 1, 2022. Further, the MSCCSP continued to publish 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 COVID-19 pandemic continued to affect all aspects of life in 2021, and the criminal justice system was not immune to its impact. The number of circuit court sentencings was notably lower than a typical year due to the impact of the COVID-19, as sentencing hearings were slowed or postponed in response to safety concerns. The 2021 Annual Report summarizes circuit court sentencing practices and trends in Maryland for fiscal year 2021, 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 2022. 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

TABLE OF CONTENTS

Executive Summary	iii
The Maryland State Commission on Criminal Sentencing Policy	1
Guidelines Background	1
MSCCSP Background.....	4
MSCCSP Structure	6
In Memoriam – Dr. Jinney S. Smith.....	8
MSCCSP Activities in 2021	10
Review of New and Amended Offenses Passed During the 2021 Legislative Session	10
Miscellaneous Modifications to the Guidelines Offense Table in 2021.....	12
Vote to Reclassify Sex Offense, 3 rd Degree, Involving Age-Based Elements.....	15
Cell-by-Cell Compliance Analysis and Vote to Adopt Amendments to the Sentencing Matrices for Drug and Property Offenses	16
Preliminary Review of Guidelines Compliance and Offender and Offense Scores by Race, Ethnicity, and Gender.....	23
Adopted Clarification for Scoring Special Victim Vulnerability.....	24
Adopted Revisions to the Definition of Guidelines-Compliant Plea Agreements	24
Adopted Clarified Instruction for Scoring Victim Injury in Cases Involving Child Pornography	26
Revisions to the Sentencing Guidelines Worksheet.....	27
Training and Education	27
Information, Data Requests, and Outreach	30
Data Collection, Oversight, and Verification	31
Maryland Automated Guidelines System (MAGS).....	32
Public Comments Hearing.....	37
Sentences Reported in FY 2021	39
Sentencing Guidelines Worksheets Received	39
Offender Characteristics.....	42
Offense Characteristics	45
Victim Information	50
Disposition and Sentence Characteristics	52
Judicial Compliance with Maryland’s Voluntary Sentencing Guidelines	63
Judicial Compliance Rates Overall.....	63
Judicial Compliance Rates by Circuit	65

TABLE OF CONTENTS (CONTINUED)

Judicial Compliance Rates by Crime Category	67
Judicial Compliance Rates by Type of Disposition	67
Judicial Compliance Rates by Offender Race/Ethnicity	68
Judicial Compliance Rates by Offender Gender	70
Departure Reasons	71
Planned Activities for 2022	75
Appendices	77
Appendix A: Sentencing Guidelines Matrices	78
Appendix B: Maryland Sentencing Guidelines Worksheet	81
Appendix C: Sentencing Guidelines Compliance and Average Sentence by Offense Type, Single Count Cases, Fiscal Year 2021	82
Appendix D: Description of Types of Disposition	83
Appendix E: Common Departure Reasons Listed on the Sentencing Guidelines Departure Reference Card	84
Appendix F: Maryland Automated Guidelines System (MAGS) Deployment Schedule	85

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 2021, the MSCCSP reviewed new and amended criminal laws from the 2021 Legislative Session; reviewed and classified previously unclassified offenses; made miscellaneous modifications to the Guidelines Offense Table; voted to reclassify *Sex offense, 3rd degree, involving age-based elements*; conducted a cell-by-cell compliance analysis and voted to adopt amendments to the sentencing matrices for drug and property offenses; completed a preliminary review of sentencing guidelines compliance and offender and offense score characteristics by race, ethnicity, and gender; adopted a clarification to the instructions for scoring the special victim vulnerability component of the offense score; adopted a revised definition for guidelines-compliant binding plea agreements; and adopted a clarification to the instructions for scoring the victim injury component of the offense score in cases involving photographic or video evidence of child pornography.

In fiscal year 2021, the MSCCSP received guidelines worksheets for 6,387 sentencing events in the State's circuit courts. A worksheet was submitted for 95.8% of guidelines-eligible cases. With a handful of exceptions, all of the fiscal year 2021 worksheets were submitted electronically using the Maryland Automated Guidelines System (MAGS). The vast majority of cases were resolved by either a binding plea agreement (42.2%) or other plea agreement (37.7%). Nearly 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 7.8% of sentencing events; other alternatives to incarceration were utilized in 4.8% of sentencing events; and 0.7% of defendants received a sentence involving both.

The overall guidelines compliance rate in fiscal year 2021 was 81%, which exceeded the Commission's goal of 65% compliance. When departures occurred, they were more often below the guidelines than above. All eight trial court judicial circuits met the benchmark rate of 65% compliance. Departures were least likely for person offenses, followed closely by drug offenses

and property offenses. A comparison of judicial compliance rates by type of disposition (plea agreement, plea with no agreement, bench trial, and jury trial) showed that compliance was most likely in cases adjudicated by a plea agreement. In contrast, compliance was least likely in cases adjudicated by a bench trial. When considering compliance rates by defendant race, rates were similar across racial categories. Guidelines compliance ranged from 79.5% for White defendants to 87.6% for Hispanic defendants. Similarly, compliance rates were comparable for male (80.9%) and female (82.5%) defendants. The most 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 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 2022. 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 2022 Legislative Session and adopt seriousness categories for new and revised offenses as needed. Furthermore, the MSCCSP will implement the pending amendments to the sentencing matrices for drug and property offenses. Finally, the MSCCSP has identified an ambitious list of other new activities that the Commission plans to address in 2022.

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 as 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, guidelines revisions should be considered. Based on this previously adopted policy, the Commission adopted the goal of 65% as the benchmark standard for sentencing guidelines compliance. Over the years, the MSCCSP has maintained the primarily descriptive nature of the guidelines, while allowing for the Commission to make nuanced policy decisions to ensure the guidelines are consistent with legislative intent and that 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

For Cases Originating in Circuit Court	
Guidelines-Eligible	Guidelines-Ineligible
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 binding 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
For Cases Originating in District Court	
Guidelines-Eligible	Guidelines-Ineligible
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 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. The sentencing matrices for drug, person, and property offenses are provided in Appendix A. 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 the offender was in the criminal justice system at the time the offense was committed (i.e., on parole, probation, or temporary release from incarceration, such as work release), has a juvenile record or prior criminal record as an adult, and has any prior adult parole or probation violations.

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

MSCCSP Background

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

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

The General Assembly designed and authorized the MSCCSP with the purpose of fulfilling the above legislative intentions. The General Assembly authorized the MSCCSP to “adopt existing sentencing guidelines for sentencing within the limits established by law which shall be considered by the sentencing court in determining the appropriate sentence for defendants who plead guilty or nolo contendere to, or who were found guilty of crimes in a circuit court” (1999 Md. Laws, Chap. 648). The MSCCSP also has authority to “adopt guidelines to identify defendants who would be appropriate for participation in corrections options programs” (1999 Md. Laws, Chap. 648). The sentencing court is to consider these guidelines in selecting either the guidelines sentence for a defendant or sanctions under corrections options.

Pursuant to CP, § 6-210, the MSCCSP collects sentencing guidelines worksheets, monitors sentencing practice, and adopts changes to the sentencing guidelines. 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 for 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, 4th Judicial Circuit, as the chair of the MSCCSP. Other Governor appointees include Kyle E. Scherer, an attorney with Venable LLP, 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; Robert H. Harvey, Jr., State's Attorney for Calvert 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 August 20, 2021, Mr. Scherer replaced William (Willy) E. Koutroumpis, who served as a member of the MSCCSP from November 2, 2017, through June 30, 2021. Effective September 1, 2021, Mr. Harvey replaced the Honorable Brian L. DeLeonardo, who served as a member of the MSCCSP from January 7, 2016, through July 14, 2021. Additionally, on August 20, 2021, Governor Hogan reappointed Dr. Brian D. Johnson and Alethea P. Miller to serve in their respective positions on the Commission.

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 Charles E. Sydnor, III and Christopher R. West. The President of the Senate, Bill Ferguson, appointed both Senators Sydnor and West to the MSCCSP on July 27, 2021. Senator Sydnor replaced Senator Delores G. Kelley, who served as a member of the Study Commission and subsequent MSCCSP from 1999 through July 26, 2021. Senator West replaced Senator Robert G. Cassilly, who served as a member of the MSCCSP from January 1, 2016, through July 26, 2021. The Speaker of the House is also responsible for two appointments: Delegates David Moon and J. Sandy Bartlett. The Speaker of the House, Adrienne A. Jones, appointed Delegate J. Sandy Bartlett to the MSCCSP on June 7, 2021. Delegate Bartlett replaced Delegate Luke H. Clippinger, who served as a member of the MSCCSP from February 4, 2019, through June 6, 2021.

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.

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 current members include Robert H. Harvey, Jr., Richard A. Finci, and Senator Charles E. Sydnor, III. Mr. Harvey and Senator Sydnor replaced the Honorables Brian DeLeonardo and Delores Kelley as members of the Guidelines Subcommittee in July 2021. Each year, the Guidelines Subcommittee reviews all new and revised offenses created by the General Assembly and provides recommendations to the full Commission for seriousness category classification. Additionally, the Guidelines Subcommittee reviews suggested revisions to the sentencing guidelines and routinely reports to the overall Commission on guidelines compliance data.

The MSCCSP is a state agency within the Executive Branch of Maryland, with its office in College Park. 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



DEPARTMENT OF CRIMINOLOGY AND CRIMINAL JUSTICE

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.

Recognition of Commissioner, Senator Delores G. Kelley

The MSCCSP would like to recognize the retirement from the MSCCSP of its long-standing Commissioner, Senator Delores G. Kelley. Senator Kelley began her tenure in 1996, as part of the predecessor Study Commission. She then continued to serve on the permanent Commission and as a member of the Guidelines Subcommittee following its inception in 1999 through July 26, 2021. Over her 25 years of service, Senator Kelley consistently encouraged the Commission to make decisions based on research, best practices, and analysis of the guidelines data. In fulfilling her role in both the Maryland Legislature and on the Commission, Senator Kelley worked tirelessly to improve nearly every aspect of justice for Marylanders. Her leadership and dedication have profoundly contributed to the work and mission of the MSCCSP.

In Memoriam – Dr. Jinney S. Smith

It is with great sadness that the MSCCSP acknowledges the passing of Dr. Jinney S. Smith on March 24, 2021. In the summer of 2020, Dr. Smith became the Deputy Director for Statistical Operations at the U.S. Department of Justice's Bureau of Justice Statistics. Previously, she was the Associate Director of the Maryland Data Analysis Center (MDAC), University of Maryland, College Park, where she directed criminal justice research projects that made leading-edge use of administrative data. In her role at the MDAC, Dr. Smith made significant contributions that helped to improve the Maryland sentencing guidelines.

Dr. Smith led the effort to help the MSCCSP use a data-driven approach by incorporating information from multiple sources to address a policy question concerning discrepancies in how juveniles are committed to the Maryland Department of Juvenile Services (DJS). It was discovered that these discrepancies may lead to inconsistent and potentially unfair sentencing guidelines if those youths later re-offend and are sentenced as 18 to 22 year-old adults.

Specifically, it was noted that variations in the definition of juvenile commitment across local jurisdictions might result in disparities in the scoring of the juvenile delinquency component of an adult offender's prior criminal record in the Maryland sentencing guidelines. Previously, the juvenile delinquency component utilized a combination of juvenile adjudications and commitments to assign a point value to the offender's juvenile record indicating whether he or she is at low, medium, or high risk of recidivism, which then contributes to a measure of his or her overall prior record. The MSCCSP collaborated with MDAC to evaluate the juvenile score. Several alternative scoring methods were reviewed, and the Commission ultimately adopted a revised scoring method effective July 1, 2018, based solely on juvenile adjudications, thus reducing the disparities associated with juvenile commitments and improving the score's predictive ability. The MDAC study, and Dr. Smith's efforts, led to a new juvenile history score and provided a model project for evidence-based policymaking. Dr. Smith also had the foresight to make sure that the memorandum of understanding (MOU) between the MSCCSP, the DJS, and the DPSCS allowed for all data collected as part of the study to be reused in future projects. The MSCCSP expresses its condolences to Dr. Smith's family, friends, and colleagues. Dr. Smith was a wonderful colleague and friend, and she is greatly missed.

MSCCSP ACTIVITIES IN 2021

The MSCCSP held five meetings in 2021, on May 11, July 6, September 14, November 10, and December 7. Due to the COVID-19 pandemic, all meetings were held via videoconference. In addition, the Commission held its annual public comments hearing on December 7. In compliance with the Public Meetings Act, meeting details were published to the MSCCSP website. Additionally, all 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).¹ The following discussion provides a review of the Commission's activities in 2021.

Review of New and Amended Offenses Passed During the 2021 Legislative Session

The MSCCSP reviewed new criminal laws from the 2021 Legislative Session to identify new and amended offenses requiring the adoption or modification of seriousness categories.² 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 2021 Legislative Session

The MSCCSP reviewed ten new offenses passed during the 2021 Legislative Session and voted for their respective seriousness categories, shown in Table 2, during its July 6 meeting. After promulgating the proposed classifications for the new offenses through the COMAR review process, the MSCCSP adopted these updates effective November 15, 2021.

¹ The minutes for the December 7 meeting will be available on the MSCCSP website after the Commission reviews and approves the minutes at its next meeting, scheduled for May 10, 2022.

² No criminal penalties for existing guidelines offenses were amended during the 2021 Legislative Session.

Table 2. Guidelines Offense and Adopted Seriousness Category Related to New Offenses, 2021 Legislative Session

Legislation	Annotated Code of Maryland	Offense	Statutory Maximum	Adopted Seriousness Category
Chapters 178 and 179 (HB0234/SB0607)	CR, §10-626(c)(2)	Animals, Crimes Against Willfully and maliciously interfere with the use of a service animal	1Y	VII
Chapters 178 and 179 (HB0234/SB0607)	CR, §10-626(c)(1)	Animals, Crimes Against Willfully and maliciously kill or injure a service animal	2Y	VI
Chapter 144 (SB0017)	CR, §3-212.1(e)	Assault and Other Bodily Woundings Criminally negligent life-threatening injury by motor vehicle or vessel	1Y	VII
Chapter 60 (SB0071)	PS, §3-524(i)(2)	Assault and Other Bodily Woundings Intentional violation by a police officer of use of force standards resulting in serious physical injury or death to a person	10Y	IV
Chapters 681 and 682 (HB0240/SB0187)	CP, §17-102(j)(2)	Forensic Genealogy, Crimes Involving Willfully fail to destroy genetic genealogy information, forensic genetic genealogical (FGG) profiles, or DNA samples that are required to be destroyed in accordance with CP, §17-102(h)	1Y	VII
Chapters 681 and 682 (HB0240/SB0187)	CP, §17-102(i)(2)	Forensic Genealogy, Crimes Involving Disclose genetic genealogy data, forensic genetic genealogical (FGG) profiles, or DNA samples not authorized by a court order in the course of a forensic genetic genealogical DNA analysis and search (FGGS), or in the course of any criminal proceeding that arises from an FGGS	5Y	V
Chapters 145 and 146 (HB00425/SB0623)	CR, §7-302(d)(4)	Telecommunications and Electronics, Crimes Involving Knowingly possess ransomware with the intent to use the ransomware for the purpose of introduction into the computer, computer network, or computer system of another person without the authorization of the other person	2Y	V

Legislation	Annotated Code of Maryland	Offense	Statutory Maximum	Adopted Seriousness Category
Chapters 11 and 35 (SB0208/HB0004 -- 2020) ³	PS, §5-204.1(f)(1)	Weapons Crimes—In General Sell, rent, or transfer a rifle or shotgun by a person who is not a licensee; failure of licensee to comply with state and federal laws that apply to the sale, rental, or transfer of a rifle or shotgun; etc.	6M	VII
Chapters 11 and 35 (SB0208/HB0004 -- 2020) ³	PS, §5-204.1(f)(2)	Weapons Crimes—In General Provide false information while conducting a transaction for the sale, rental, or transfer of a rifle or shotgun	3Y	VI
Chapters 11 and 35 (SB0208/HB0004 -- 2020) ³	PS, §5-207	Weapons Crimes—In General Sell, rent, transfer, or loan a rifle or shotgun to restricted person (convicted of a disqualifying crime, fugitive, habitual drunkard, etc.)	5Y	VI

Miscellaneous Modifications to the Guidelines Offense Table in 2021

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 more than one year, not previously classified by the Commission. The Commission reviewed these previously unclassified offenses, listed in Table 3, during its July 6 and September 14 meetings, 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 the updates for the first four offenses listed in Table 3 effective November 15, 2021. The fifth offense, involving crimes against public health and safety, will be formally adopted on February 1, 2022, following promulgation through the COMAR review process.

³ This bill was passed by the Maryland Legislature and vetoed by the Governor in 2020. The Legislature overrode the veto, and the bill became law, per the Maryland Constitution, on February 12, 2021.

Table 3. Adopted Seriousness Category for Previously Unclassified Offenses

Annotated Code of Maryland	Offense	Statutory Maximum	Offense Type	Adopted Seriousness Category
CR, §5-619(d)(3)	CDS and Paraphernalia Paraphernalia—deliver or sell, or manufacture or possess with intent to deliver or sell, drug paraphernalia, previous conviction for deliver drug paraphernalia to minor by adult who is 3 or more years older	2Y	Drug	VII
HG, §21-1215(b)(2) (penalty)	Fraud, Miscellaneous Violation of Maryland Food, Drug, and Cosmetic Act, subsequent	3Y	Property	VI
SG, §20-1103(c)(2)	Human Relations, Crimes Involving Injury, intimidation, or interference with protected housing activities because of a person's race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, national origin, or source of income—resulting in bodily injury	10Y	Person	IV
SG, §20-1103(c)(3)	Human Relations, Crimes Involving Injury, intimidation, or interference with protected housing activities because of a person's race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, national origin, or source of income—resulting in death	LIFE	Person	II
EN, §9-204 EN, §9-343(a)(1)(ii) (penalty)	Public Health and Safety, Crimes Against Install, alter, or extend water supply systems, sewerage systems, or refuse disposal systems without a permit, etc., subsequent	2Y	Property	VII

In 2021, five previously unlisted offenses that carry a maximum penalty of one year or less were added to the Guidelines Offense Table. By MSCCSP rule, any offense with a maximum incarceration penalty of one year or less is automatically assigned a seriousness category VII (COMAR 14.22.01.09B(2)(f)) unless the Commission chooses to adopt a different seriousness category. These previously unlisted offenses, as cited in Table 4, 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 November 15, 2021.

Table 4. Previously Unlisted Offenses with a Maximum Penalty of One Year or Less

Annotated Code of Maryland	Offense	Statutory Maximum	Offense Type	Adopted Seriousness Category
HG, §5-514	Deceased Human Body, Crimes Involving Bury or dispose of body in unauthorized place	1Y	Person	VII
HG, §21-1215(b)(1) (penalty)	Fraud, Miscellaneous Violation of Maryland Food, Drug, and Cosmetic Act, 1 st offense	1Y	Property	VII
BR, §8-605 BR, §8-623 (penalty)	Home Improvement, Crimes Involving Abandon or fail to perform contract	6M	Property	VII
SG, §20-1103(c)(1)	Human Relations, Crimes Involving Injury, intimidation, or interference with protected housing activities because of a person's race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, national origin, or source of income	1Y	Person	VII
EN, §9-204 EN, §9-343(a)(1)(i) (penalty)	Public Health and Safety, Crimes Against Install, alter, or extend water supply systems, sewerage systems, or refuse disposal systems without a permit, etc., 1 st offense	1Y	Property	VII

In 2021, one previously classified but unlisted offense that carries a maximum penalty greater than one year was added to the Guidelines Offense Table. This previously classified but unlisted offense is cited in Table 5. After promulgation through the COMAR review process, the MSCCSP added this offense to the offense table effective November 15, 2021.

Table 5. Previously Classified but Unlisted Offense with a Maximum Penalty Greater Than One Year

Annotated Code of Maryland	Offense	Statutory Maximum	Offense Type	Adopted Seriousness Category
RP, §7-321 (penalty)	Commercial Fraud, Other Other violation of any provision of Protection of Homeowners in Foreclosure Act, Real Property Article, Title 7, Subtitle 3	3Y	Property	VI

Finally, in 2021, the seriousness category for one offense was modified. During its September 14 meeting, the Commission voted to increase the seriousness category for *Sex offense, 3rd degree, involving age based elements*, from a seriousness category V offense to a seriousness category IV offense. This modification, reflected in Table 6, will be formally adopted on February 1, 2022, following promulgation through the COMAR review process. The Commission's decision to reclassify *Sex offense, 3rd degree, involving age based elements*, is detailed in the next section.

Table 6. Offense with Seriousness Category Change

Annotated Code of Maryland	Offense	Statutory Maximum	Offense Type	Previous Seriousness Category	Revised Seriousness Category
CR, §3-307(a)(3) CR, §3-307(a)(4) CR, §3-307(a)(5)	Sexual Crimes Sex offense, 3 rd degree (a)(3), (a)(4), (a)(5) — age based elements	10Y	Person	V	IV

Vote to Reclassify Sex Offense, 3rd Degree, Involving Age-Based Elements

Prior to 2007, all acts defined as *Sex offense, 3rd degree*, pursuant to CR, § 3-307, were classified by the MSCCSP as seriousness category V person offenses, with no distinction based on the subsection of the statute. Based on feedback from practitioners who expressed concern that the guidelines for *Sex offense, 3rd degree*, were too low and an analysis of the sentencing guidelines data, the MSCCSP voted in 2006 to increase the seriousness category classification for violations of CR, §§ 3-307(a)(1) and 3-307(a)(2), *Sex offense, 3rd degree, employ or display a dangerous weapon, etc., or with mentally defective, mentally incapacitated, or physically helpless individual*, from a seriousness category V to a seriousness category IV offense. *Sex offense, 3rd degree, involving age-based elements*, pursuant to CR, §§ 3-307(a)(3), 3-307(a)(4), and 3-307(a)(5), remained a seriousness category V offense.

In recent years, the MSCCSP staff has received feedback from multiple practitioners suggesting that the seriousness category classification for *Sex offense, 3rd degree, involving age-based elements*, is too low. In its 2020 Criminal Justice Community Survey, practitioners were asked specifically what if anything they would change about the guidelines, for instance if the guidelines for any offenses are too low or too high. Four respondents, including three circuit court judges and one private criminal defense attorney, responded that the guidelines for sex offenses are too low.

In response to these concerns, the MSCCSP analyzed in 2021 sentencing data for single-count sentencing events, sentenced in calendar years 2018 through 2020, involving *Sex offense, 3rd degree, involving age-based elements*, and identified it as the offense with the highest rate of sentencing departures above the guidelines. In calendar years 2018 through 2020, approximately 81.3% of sentences for single-count sentencing events involving *Sex offense, 3rd degree, involving age-based elements*, were within the guidelines; approximately 0.9% of sentences were departures below the guidelines; and approximately 17.8% of sentences were departures above the guidelines.

Given the aforementioned factors, the MSCCSP voted at its September 14, 2021, meeting to reclassify *Sex offense, 3rd degree, involving age-based elements*, from a seriousness category V to a seriousness category IV offense. The proposed revisions were submitted in September 2021 for promulgation through the COMAR review process, with an expected implementation date of February 1, 2022.

Cell-by-Cell Compliance Analysis and Vote to Adopt Amendments to the Sentencing Matrices for Drug and Property Offenses

The Maryland sentencing guidelines are intended to be primarily descriptive. That is, the guidelines may be amended when the data indicate that sentences are not consistent with the recommended ranges. Descriptive guidelines are those that are informed by analysis of actual current sentencing practices. They are intended to illustrate to judges how their colleagues are sentencing, on average, for a typical case. This is accomplished by analyzing recent historical sentencing data and using that data to inform or describe the guidelines ranges.

Given the primarily descriptive nature of the guidelines, it is important to examine if sentences are consistent with the current guidelines ranges. Review of compliance with the sentencing guidelines is statutorily required by the Commission's enabling legislation (CP, § 6-209(b)(1)(ii)) and is one of the primary responsibilities of the MSCCSP. The Commission's annual reports provide detailed analyses of compliance with the guidelines by crime category, judicial circuit, crime categories, type of disposition, and by offender race, ethnicity, and gender (see the *Judicial Compliance* section of this report starting at page 63 for a review of these compliance measures for fiscal year 2021). Additionally, the MSCCSP periodically completes a more detailed "cell-by-cell" analysis every three to five years. The cell-by-cell compliance analysis

reviews data for sentences from each of the intersecting grid cells⁴ of the three matrices to consider whether changes to the guidelines ranges are warranted.

The last review concluded in December 2015 with the Commission's vote to approve revisions to the sentencing matrix for seriousness categories IV and V drug offenses, effective July 1, 2016. The Commission initiated a new review of guidelines compliance by matrix cells in the spring of 2021. The 2021 review spanned five Commission meetings and is based on data for single count, guidelines-eligible statewide sentencing events from all 24 jurisdictions during calendar years 2018-2020.

At its April 2021 meeting, the Sentencing Guidelines Subcommittee initiated the Commission's current cell-by-cell compliance analysis. As noted above, the current review examined single count sentencing data from calendar years 2018 through 2020. This timing allowed for the collection of three full calendar years of sentencing guidelines data following the Justice Reinvestment Act and corresponding October 2017 revisions to the seriousness categories for many common property offenses and drug possession offenses. The analysis looked at average sentence length and both strict and regular compliance by cell.

Strict compliance considers a sentence compliant only if the sentence (not including suspended time) falls within the recommended range, while regular compliance provides additional allowances for sentences involving corrections options, binding pleas, and credited time. As a first step in the review, the Subcommittee examined both regular compliance and strict compliance rates for each cell of the current matrices, with particular attention paid to cells with rates below the 65% benchmark standard and a sufficient sample size of at least 50 total cases.

Findings from the first step of the review were reported at the May 2021 Commission meeting. The first step considered compliance and strict compliance by matrix and cell for single count sentencing events in 2018 through 2020. The primary finding was that most of the cells with at least 50 cases are meeting the 65% compliance benchmark, as regular compliance is below the 65% benchmark in only 2.2% of all cells across the three matrices. However, when considering strict compliance, more than one-fourth of those cells have compliance rates less than 65%. Further, in most noncompliant cells, departures below the guidelines exceed departures above the guidelines.

⁴ A "cell" is the grid intersection of an individual's offender score and offense seriousness category (for drug and property offenses) or offense score (for person offenses) within the respective sentencing guidelines matrix

The next step of the review was to identify the middle 65% of sentences within each cell of the sentencing matrices for drug and property offenses.⁵ By identifying the middle 65% of sentences and considering revisions aligned more closely with the middle 65%, the Commission achieves two things. First, the 65% compliance benchmark will be met if the Commission identifies the range that captures the middle 65% of sentences. Second, the middle 65% will reflect the average or middle sentence for a particular cell while excluding outlier sentences on either end of the range. Accordingly, the guidelines will inform about the average sentence for a typical case.

The second step of the review also considered the impact of the COVID-19 pandemic on sentences and guidelines compliance. For the review, the start date of the pandemic is identified as March 5, 2020, which is when Governor Hogan declared a State of Emergency in Maryland due to increasing COVID-19 cases. Court operations were reduced in accordance with Phase I restrictions on March 16, 2020, and courts remained in various phases of restricted operations through April 25, 2021. Approximately 13% of the single-count sentencing events in calendar years 2018-2020 occurred during the COVID-19 pandemic. To the extent that defendants sentenced during the COVID-19 pandemic were diverted from incarceration or were incarcerated for shorter periods of time due to the pandemic, one would expect to observe differences in strict compliance by matrix and cell when these sentences are excluded. This analysis showed that there were few differences in strict compliance rates by matrix and cell when sentences that occurred during the COVID-19 pandemic were removed, with strict compliance rates generally varying by no more than a few percentage points.

The finding that strict compliance rates for the three-year period reviewed in the cell-by-cell compliance analysis were not significantly different when the COVID-19 data were excluded is likely due to two primary factors. First, the cell-by-cell compliance analysis covers only a portion (10 months) of the period affected by the pandemic (March 5, 2020, through December 31, 2020). Second, the number of sentencing events occurring during the pandemic is small relative to the total number of sentencing events in the three-year period examined by the current review. The most significant impact of the COVID-19 pandemic on these data was that the number of circuit court sentences declined. Because there were so few cases sentenced in those first 10 months of the pandemic, the COVID-19 pandemic did not affect the data that was analyzed to

⁵ Potential revisions to the person offense matrix may be considered later. The MSCCSP decided to focus on the drug and property matrices because interpretation of the cell-by-cell analyses is more straightforward than that for the sentencing matrix for person offenses, which includes the additional elements of victim injury, weapon presence, and victim vulnerability. Accordingly, the Commission decided to address the drug and property matrices before considering changes to the more complex person matrix.

develop the proposed amendments to the guidelines. Accordingly, the MSCCSP decided to include in its cell-by-cell compliance review all sentencing events for calendar years 2018-2020 to maximize the number of sentencing events informing the review.

The third step of the review considered MSCCSP staff-proposed amendments to the drug and property matrices and examined how compliance rates would change with those revisions. The staff-proposed revisions strike a balance between a strictly descriptive middle 65% of current sentences, the number of months in each range, and the proportionality of ranges across cells. The proposed revisions move the guidelines substantially closer to the middle 65%. However, they do not correspond strictly to the middle 65%, as they also offer proportional incremental increases going across the matrices (as the offender criminal history score increases) and down the matrices (as the offense severity increases).

Table 7 illustrates the current and pending guidelines ranges for the sentencing matrix for drug offenses. The proposed guidelines result in nine cells with at least 50 cases where strict compliance is less than 65%. The current drug offense matrix has 15 cells with at least 50 cases where strict compliance is less than 65%. Further, all of the revised cells with 50 cases or more would have a regular compliance rate of greater than 65%. Accordingly, the proposed revisions to the sentencing matrix for drug offenses will result in higher compliance with the guidelines.

Table 8 illustrates the current and pending guidelines ranges for the sentencing matrix for property offenses. The proposed guidelines result in six cells with at least 50 cases where strict compliance is less than 65%. The current property offense matrix has 14 cells with at least 50 cases where strict compliance is less than 65%. Further, all of the revised cells with at least 50 cases have a regular compliance rate of 65% or greater. Accordingly, the proposed revisions to the sentencing matrix for property offenses will result in higher compliance with the guidelines.

The proposed amendments to the sentencing matrices for drug and property offenses were presented for a vote at the Commission's November 10, 2021, meeting. At that time, the Commission voted to tentatively approve these amendments pending public comment at a December 7, 2021, hearing. The proposed amendments were posted on the MSCCSP website and were published in the Maryland Register in advance of the December 7 hearing. Further, the Commission distributed a call for comment on the proposed amendments to an e-mail distribution list of more than 1,500 criminal justice practitioners and interested individuals.

During the December 7 public hearing and during prior MSCCSP review, two primary concerns regarding guidelines revisions were noted. First, concern was expressed whether the proposed revisions were intended to reduce sentences for drug offenders, particularly those convicted of drug distribution. In response, it was noted that the proposed guidelines revisions are not intended to reduce sentences and revisions to the guidelines are not intended to change sentencing. Rather, the proposed revisions amend the guidelines to reflect recent sentencing trends more accurately. In other words, the proposed revisions more closely align the guidelines with how judges are currently sentencing. The guidelines are intended to reflect the average sentence for a typical case based on analysis of sentencing guidelines data. Further, it is important to remember that the guidelines remain voluntary, and judges retain the option to sentence above or below the guidelines.

A second concern regarding the proposed guidelines revisions was whether the revisions reflect sentencing trends statewide, or whether they reflect sentences from one or two larger jurisdictions. In response, it was noted that the proposed revisions are based on analysis of statewide sentencing trends. The guidelines are intended for use statewide and are not intended to reflect jurisdiction-specific sentencing. There was some concern specifically noted that the proposed guidelines for the seriousness category III-B drug offenses may be skewed or too heavily influenced by sentences from the 8th Judicial Circuit, as the 8th Circuit accounts for a disproportionate number of III-B drug offense sentencings. Accordingly, an analysis was completed to examine the sentences for III-B offenses separately for the 8th Circuit versus all other judicial circuits. This analysis found that the average sentences in the 8th Circuit trend lower. However, the sentences in other jurisdictions *also* trend lower than the current guidelines ranges, confirming that proposed revisions were warranted. Further, the pending ranges are more aligned with the sentences from the other jurisdictions than the sentences in the 8th Circuit, which should eliminate the concern that the pending revisions are being driven by trends from a particular jurisdiction.

After receiving input on the proposed amendments at the public hearing, the Commission voted on December 7, 2021, to officially adopt the proposed amendments to the sentencing matrices for drug and property offenses (see Tables 7 and 8 illustrating the current and pending ranges). The majority agreed it was reasonable to consider revisions to the sentencing matrices for drug and property offenses so that they more accurately reflect the current sentencing practices of judges, while also maintaining proportionality across rows and columns of the matrix to be consistent with the principles of the guidelines. A primary rationale for supporting the proposed revisions is that the guidelines are most meaningful and relevant when they are regularly

reviewed and when they are consistent with current sentencing trends. The guidelines legitimacy is reinforced when they accurately reflect current sentences that are imposed across the State. Further, the proposed amendments support transparency because they accurately reflect current judicial sentencing, and ultimately this helps to promote uniformity, consistency, and fairness in criminal sentencing.

As with any changes to the sentencing guidelines, the Commission must promulgate the proposed revisions to the sentencing matrices for drug and property offenses through COMAR. Promulgation is a multi-step process occurring over several months, and regulations do not become effective until the end of the process. In addition to the COMAR promulgation process, MAGS will require programming changes to reflect the revisions to the sentencing matrices for drug and property offenses. The MSCCSP staff will also need to update all the various sentencing guidelines instructional materials, including the Maryland Sentencing Guidelines Manual (MSGM), the MAGS User Manual, and the MSCCSP website to reflect the guidelines revisions. Given these necessary steps, it is anticipated that the effective date for final adoption of the revisions will be July 1, 2022.

A [video presentation](#) further detailing the process of how the Commission completed the cell-by-cell compliance analysis that culminated in a vote to adopt amendments to the sentencing matrices for drug and property offenses is available on the MSCCSP website.

Table 7. Current Guidelines Ranges and Pending Revisions to the Sentencing Matrix for Drug Offenses in COMAR 14.22.01.11D(2)

Row 1 – Current range. Row 2 – Pending revised range, effective 7/1/2022.

<i>Offender Score</i>								
<i>Offense Seriousness Category</i>	0	1	2	3	4	5	6	7 or more
VII	P [no change]	P [no change]	P P-1M	P-1M P-3M	P-3M P-4M	P-6M [no change]	3M-6M P-9M	6M-2Y P-1Y
VI	Available for future use. There are currently no seriousness category VI drug offenses.							
V	P-1M [no change]	P-6M P-3M	P-1Y P-4M	1M-1Y P-6M	2M-18M P-9M	3M-2Y P-1Y	4M-3Y 1M-18M	6M-4Y 2M-2Y
IV	P-3M [no change]	P-9M P-4M	1M-1Y P-6M	2M-18M P-9M	3M-2Y P-1Y	4M-2.5Y 1M-18M	6M-3Y 2M-2Y	8M-5Y 3M-3Y
III-A Marijuana import 45 kilograms or more, and MDMA 750 grams or more	P-18M P-6M	P-2Y P-9M	6M-2Y P-18M	1Y-4Y 1M-2Y	2Y-6Y 3M-3Y	3Y-8Y 6M-5Y	4Y-12Y 1Y-6Y	10Y-20Y 2Y-8Y
III-B Non-marijuana and non-MDMA, Except Import	6M-3Y P-9M	1Y-3Y P-18M	18M-4Y 1M-2Y	3Y-7Y 3M-3Y	4Y-8Y 6M-5Y	5Y-10Y 1Y-6Y	7Y-14Y 2Y-8Y	12Y-20Y 4Y-12Y
III-C Non-marijuana and non-MDMA, Import	1Y-4Y P-18M	2Y-5Y 1M-2Y	3Y-6Y 3M-3Y	4Y-7Y 6M-5Y	5Y-8Y 1Y-6Y	6Y-10Y 2Y-8Y	8Y-15Y 4Y-12Y	15Y-25Y 6Y-14Y
II	20Y-24Y 16Y-20Y	22Y-26Y 18Y-22Y	24Y-28Y 20Y-24Y	26Y-30Y 22Y-26Y	28Y-32Y 24Y-28Y	30Y-36Y 26Y-30Y	32Y-37Y 28Y-32Y	35Y-40Y 30Y-36Y

P=Probation, M=Months, Y=Years

Table 8. Current Guidelines Ranges and Pending Revisions to the Sentencing Matrix for Property Offenses in COMAR 14.22.01.11E(2)

Row 1 – Current range. Row 2 – Pending revised range, effective 7/1/2022.

<i>Offender Score</i>								
<i>Offense Seriousness Category</i>	0	1	2	3	4	5	6	7 or more
VII	P-1M P	P-3M [no change]	3M-9M P-6M	6M-1Y P-9M	9M-18M P-1Y	1Y-2Y P-18M	1Y-3Y 1M-2Y	3Y-5Y 6M-2.5Y
VI	P-3M [no change]	P-6M [no change]	3M-1Y P-9M	6M-2Y P-1Y	1Y-3Y P-18M	2Y-5Y 1M-2Y	3Y-6Y 3M-3Y	5Y-10Y 9M-5Y
V	P-6M [no change]	P-1Y P-9M	3M-2Y P-1Y	1Y-3Y P-18M	18M-5Y 1M-2Y	3Y-7Y 3M-3Y	4Y-8Y 6M-5Y	8Y-15Y 1Y-6Y
IV	P-1Y P-9M	3M-2Y P-1Y	6M-3Y P-18M	1Y-4Y 1M-2Y	18M-7Y 3M-3Y	3Y-8Y 6M-5Y	5Y-12Y 9M-6Y	10Y-20Y 18M-8Y
III	P-2Y P-1Y	6M-3Y P-18M	9M-5Y 1M-2Y	1Y-5Y 3M-3Y	2Y-8Y 6M-5Y	3Y-10Y 9M-6Y	7Y-15Y 1Y-8Y	15Y-30Y 2Y-9Y
II	2Y-5Y 1Y-3Y	3Y-7Y 18M-4Y	5Y-8Y 2Y-5Y	5Y-10Y 3Y-7Y	8Y-15Y 5Y-8Y	10Y-18Y 5Y-10Y	12Y-20Y 7Y-12Y	15Y-40Y 8Y-15Y

P=Probation, M=Months, Y=Years

Preliminary Review of Guidelines Compliance and Offender and Offense Scores by Race, Ethnicity, and Gender

One of the primary goals of the MSCCSP, as provided in its statement of intent (CP, § 6-202), is that sentencing should be fair and proportional and that sentencing policies should reduce unwarranted disparity, including any racial disparity, in sentences for defendants who have committed similar crimes and have similar criminal histories. To this end, the MSCCSP stated in its 2020 Annual Report its intent to review offender and offense score characteristics by race/ethnicity for guidelines defendants sentenced in Maryland circuit courts. The MSCCSP staff completed in 2021 a preliminary review of sentencing guidelines worksheet data, by race, ethnicity, and gender, for guidelines-eligible defendants sentenced in circuit courts from calendar years 2018 through 2020. The preliminary results of these analyses were presented to the MSCCSP at its December 7, 2021, meeting. The results included analyses examining, by

race, ethnicity, and gender, sentencing guidelines compliance and offender and offense score characteristics. Based on these results, the MSCCSP identified additional analyses for future review, including an analysis of sentencing guidelines compliance by disposition type and race, ethnicity, and gender; an analysis, by race, ethnicity, and gender, of sentencing for offenses that involve mandatory minimum sentences; and an analysis, by race, ethnicity, and gender, of the offenses that compose guidelines-eligible defendants' prior record scores.

Adopted Clarification 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, 2020, meeting to revise the term "handicap" to read "disability." 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, 2021.

Adopted Revisions to the Definition of Guidelines-Compliant Plea Agreements

Prior to April 1, 2021, the MSGM defined 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.

In keeping with the Commission's plans as indicated in its 2019 annual report and in testimony provided to the Legislature during the 2020 Legislative Session, the MSCCSP studied this issue in 2020.⁶ 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 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

⁶ In its written testimony for House Bill (HB) 1458 (2020), 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. HB 1458 did not advance out of the Judiciary Committee.

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.

After promulgating the proposed revisions through the COMAR review process, the MSCCSP adopted the revised definition of an MSCCSP binding plea agreement effective April 1, 2021.

Adopted Clarified Instruction for Scoring Victim Injury in Cases Involving Child Pornography

At the Commission's December 8, 2020, public comments hearing, Joyce King, an assistant state's attorney in the Frederick County State's Attorney's Office, provided testimony, on behalf of the Frederick County Cyber Crimes Task Force and the Maryland State's Attorney's Association, to request an increase in the guidelines for online child sex abuse and exploitation offenses in Maryland, specifically the possession and distribution of child pornography and sexual solicitation of a minor. Ms. King noted the increased prevalence of internet crimes against children, particularly during the COVID-19 pandemic, and the lasting psychological consequences to victims of child pornography as reasons for her request to increase the offenses' guidelines severity.

In response to Ms. King's request, the Commission reviewed at its May 11, 2021, meeting the treatment of offenses involving child pornography in other jurisdictions with sentencing guidelines; analyzed data on sentences from 2016 through 2020 for guidelines-eligible cases involving the possession, manufacture, or distribution of child pornography or the sexual solicitation of a minor; and contemplated potential revisions to the instructions for part B of the offense score, victim injury. Part B of the offense score instructs that the person completing the sentencing guidelines worksheet shall assign a score of 1 point if victim injury occurred and the injury was not permanent; and the person completing the sentencing guidelines worksheet shall assign a score of 2 points if victim injury occurred and the injury was permanent or resulted in the death of the victim. Further, part B of the offense score instructs that victim injury, whether physical or psychological, shall be based on reasonable proof; psychological injury shall be based on confirmed medical diagnosis or psychological counseling or treatment; and physical injury shall be more than minimal.

Given the permanent nature of the internet and the lasting consequences to victims of child pornography, the Commission voted at its May 11, 2021, meeting to revise the instructions for part B of the offense score to instruct that permanent victim injury points shall be assigned for

offenses involving photographic or video evidence of child pornography. These offenses include, but are not limited to, the possession, manufacture, and distribution of child pornography, and sexual solicitation of a minor. After promulgating the proposed revisions through the COMAR review process, the MSCCSP adopted the revisions to the instructions for part B of the offense score effective October 1, 2021.

Revisions to the Sentencing Guidelines Worksheet

In April 2021, the MSCCSP deployed MAGS Version 10.0 of the Maryland Sentencing Guidelines Worksheet. Version 10.0 implemented revisions to the “Ethnicity” and “Disposition Type” fields. First, an “Unknown” option was added to the “Ethnicity” field on the worksheet and should be selected if the defendant’s Hispanic/Latino origin is unknown. Second, pursuant to the April 1, 2021, revised instructions regarding guidelines-compliant binding pleas, the former “ABA plea agreement” disposition type was replaced with “MSCCSP binding plea agreement,” and the former “Non-ABA plea agreement” disposition type was replaced with “Other plea agreement.”

Training and Education

The MSCCSP provides sentencing guidelines and MAGS training to promote the 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 ongoing COVID-19 pandemic, all 2021 guidelines trainings and MAGS orientations were conducted remotely through interactive online webinars.

In addition to providing a general overview of the guidelines and guidelines calculation process, the trainings in 2021 included a specific emphasis on the April 1 revised instructions regarding guidelines-compliant binding pleas. In advance of this significant update, in early spring 2021, the MSCCSP targeted all the various criminal justice practitioner groups and completed webinar trainings for the Office of the Public Defender, the Maryland State Bar Association, and the Maryland State’s Attorneys’ Association. Four additional webinars were also completed. Two webinars were designed for and attended by judges and their judicial staff, and the remaining two were attended by general practitioners across the State.

In an effort to meet the MSCCSP's goal of promoting the accurate completion of the sentencing guidelines worksheet, sentencing guidelines and MAGS orientation is provided annually to circuit court law clerks throughout the State, as they play a pivotal role in the guidelines worksheet completion process. As such, two webinars were completed for law clerks and other judicial court staff in the summer of 2021. To allow for practitioners to view the trainings on demand, recordings of the spring 2021 general practitioner webinar training, titled *Maryland's Sentencing Guidelines 101: Everything You Need to Know About the Guidelines and Recent Updates*, and the summer 2021 law clerk and judicial court staff webinar training, titled *Maryland's Sentencing Guidelines and the Automated Guidelines System*, were uploaded to the [MSCCSP's YouTube channel](#).

In total, the MSCCSP provided nine guidelines training webinars in 2021 that were attended by approximately 555 participants, including circuit court judges, judicial staff, prosecutors, public defenders, Parole and Probation agents, and private defense attorneys. 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 can 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 16 of Maryland's 24 jurisdictions (Anne Arundel, Baltimore City, Baltimore County, Calvert, Caroline, Carroll, Cecil, Charles, Frederick, Howard, Kent, Montgomery, Prince George's, Queen Anne's, Talbot, and Washington Counties). The meetings provided an opportunity 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.

In 2021, the MSCCSP released an updated version of its website (www.msccsp.org). The website was redesigned with the goal of improving the accessibility of the MSCCSP's resources, reports, and support materials in a more mobile-friendly format. The website is updated 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

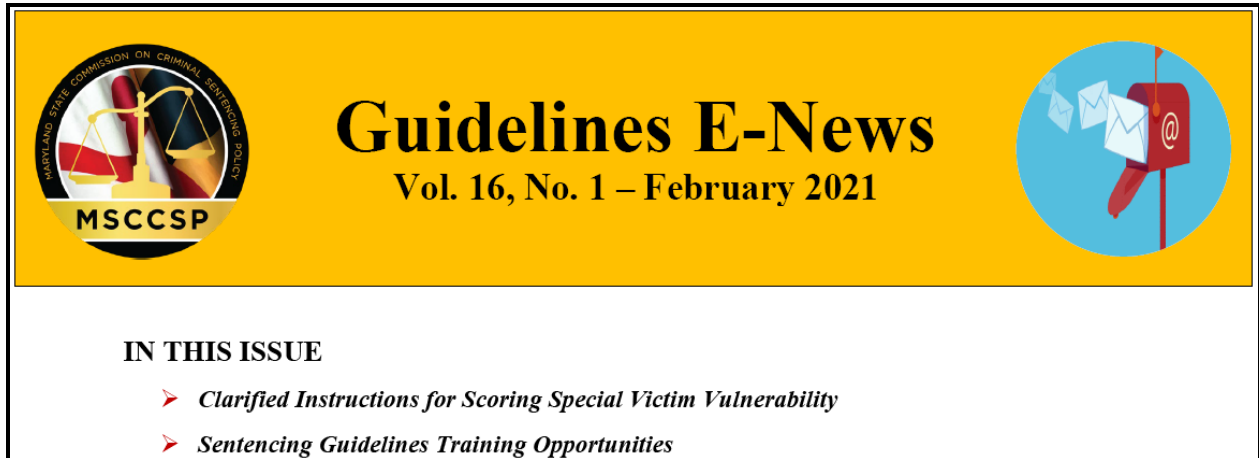
Frequently Asked Questions, reports on sentencing guidelines compliance and average sentences, *Sentencing Snapshots*, and other relevant reports. The MSCCSP website also provides minutes from prior Commission meetings and the date, location, and agenda for upcoming meetings. Finally, the MSCCSP website 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 2021. MSGM 12.4 (released February 1, 2021) includes clarified instructions for scoring special victim vulnerability. MSGM 13.0 (released April 1, 2021) includes changes to the definition of guidelines-compliant binding pleas. MSGM 13.1 (released on October 1, 2021) includes clarified instructions for scoring victim injury in cases involving child pornography. MSGM 13.2 (released November 1, 2021) includes several revisions to the Guidelines Offense Table to reflect the classification of new and amended offenses passed during the 2021 Legislative Session; the classification of four previously unclassified offenses; the addition of five previously unlisted offenses with a maximum penalty of one year or less; the addition of one previously classified but unlisted offense with a maximum penalty greater than one year; 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 (mcccsp@umd.edu) from 9 a.m. to 5 p.m., Monday through Friday, to provide prompt responses to any questions or concerns regarding the sentencing guidelines or the use of MAGS. The MSCCSP staff regularly responds to questions regarding the guidelines via phone and e-mail. Typically, these questions originate from individuals responsible for completing the guidelines worksheets (i.e., Parole and Probation agents, prosecutors, defense attorneys, and law clerks). Common requests include assistance 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, and/or guidance with accessing or navigating MAGS.

In 2021, 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 newsletter delivered electronically to criminal justice practitioners throughout Maryland. The *Guidelines E-News* provides notification regarding changes to the guidelines and serves as an information source on sentencing policy decisions. For example, the [February 2021 edition](#) highlighted clarified instructions for the scoring of special victim vulnerability.

Image 1. Guidelines E-News, Vol.16, Issue No. 1



Information, Data Requests, and Outreach

The MSCCSP strives to be a valuable resource for both our criminal justice partners and others interested in sentencing policy. To aid public understanding of the sentencing process in Maryland, the MSCCSP responds to inquiries for information related to sentencing in the State's circuit courts. In 2021, the Commission responded to approximately 40 requests for data and/or specific information related to the sentencing guidelines and sentencing trends throughout the State. A variety of individuals, including legislators/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. To respond to data requests, the MSCCSP typically provides to the requester an electronic data file created from the information collected on the sentencing guidelines worksheets.

In 2021, the MSCCSP provided sentencing information and/or data to several committees/agencies including, but not limited to, the Maryland Administrative Office of the Courts (AOC), the Office of the Public Defender, the Maryland Department of Legislative Services, the Maryland Public Policy Institute, the Caroline County State's Attorneys' Office, the Wicomico County State's Attorneys' Office, the Maryland Medical Cannabis Commission, the Federal Public Defender, the Council of State Governments Justice Center, the Amara Legal Center, Alpha Justice, and Ballotpedia.

Additionally, the MSCCSP published four issues of the [Sentencing Snapshot](#) in 2021. The *Sentencing Snapshot* is a series of topical mini-reports published quarterly. The MSCCSP hopes these mini-reports will help 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 offense report are available on the MSCCSP website. Appendix C provides an abbreviated version of the common offense 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 2021, the Commission provided information for 88 bills that proposed modifications to criminal penalties or sentencing/correctional policies.

Finally, the MSCCSP conducts outreach with other criminal justice stakeholders to provide updates about 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 January 12, 2021, the MSCCSP Executive Director, Dr. Soulé, presented information on sentencing guidelines and the data collected by the MSCCSP for the Maryland Judiciary's Equal Justice Committee Sentencing Subcommittee. In February 2021, Dr. Soulé presented information for a University of Maryland School of Public Health graduate seminar. In April 2021, Dr. Soulé provided a presentation, titled *Utilizing Guidelines to Support Fair and Just Criminal Sentencing*, at the Maryland Judicial Conference. Dr. Soulé also participated in an Anne Arundel County community forum on sentencing on November 18, 2021. Finally, Dr. Soulé was invited to speak to the Maryland House of Delegate's Judicial Transparency Workgroup on December 20, 2021.

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 previously submitted via paper sentencing guidelines worksheets. The MSCCSP staff conducts periodic reviews of the guidelines worksheets. The staff verifies accurate completion of the worksheets 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 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 can 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 (mccsp@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 (see Image 2).

Image 2. MAGS Page of MSCCSP Website



The key tasks completed in 2021 to continue the development and deployment of MAGS are summarized below.

April 1, 2021: The MSCCSP released an updated version of MAGS (10.0) for immediate use. MAGS 10.0 provides several new features. The following is a summary of the most significant changes to MAGS 10.0.

- *Ethnicity* and *Race* became mandatory fields on the *Offender Information* tab. An “Unknown” option was added to the “Ethnicity” field and should be selected if the defendant’s Hispanic/Latino origin is unknown.
- In combination with the April 1, 2021, newly adopted instructions regarding binding pleas that are deemed guidelines-compliant, under the *Disposition Type* field on the *GLS/Overall Sentence* tab, the former “ABA plea agreement” disposition type has been replaced with “MSCCSP binding plea agreement,” and the former “Non-ABA plea agreement” has been replaced with “Other plea agreement.”
- Ability for MAGS users to enter sentences that fall below non-suspendable mandatory minimums, if the offense involves an “attempt” or “conspiracy.” Pursuant to *DeLeon v. State*, 102 Md. App. 58 (1994) and *Wyatt v. State*, 169 Md. App. 394 (2006), both conspiracies and attempts are subject to only the maximum punishment for the crime that the person conspired to or attempted to commit. Unless otherwise outlined in statute, conspiracies and attempts are not subject to non-suspendable mandatory minimums associated with a given offense. Therefore, unless otherwise outlined in statute, when a user selects an offense containing a non-suspendable mandatory minimum, and the offense involves an “attempt” or “conspiracy,” the mandatory minimum will no longer display on the *Offense/Offender Score*

screen, and the individual guidelines range for the offense will no longer be adjusted to account for the non-suspendable mandatory minimum.

- The addition of clarifying language to the *Alternatives to Incarceration* tab to indicate that a defendant’s pre-sentence participation in drug court or other problem-solving court constitutes a “Corrections Options Program” and should be marked accordingly in MAGS.
- Revision of the Days Calculator on the *Individual Offense Sentence* screen to mirror how credit for time served is calculated in Maryland Electronic Courts (MDEC), in that the start date and end date are included when calculating the number of days served. The judges and/or attorneys are responsible for determining the official number of days of credit.

In calendar year 2021, there were approximately 46,000 MAGS user logins, an increase of 44% from calendar year 2020 (see Figures 1 and 2). The majority (97%) of the user logins in calendar year 2021 originated from either the prosecutors or the circuit courts. Additionally, the GLCT was accessed approximately 6,500 times in calendar year 2021, a 21% percent increase from calendar year 2020.

Figure 1. MAGS and GLCT User Logins, April 2013 through December 2021

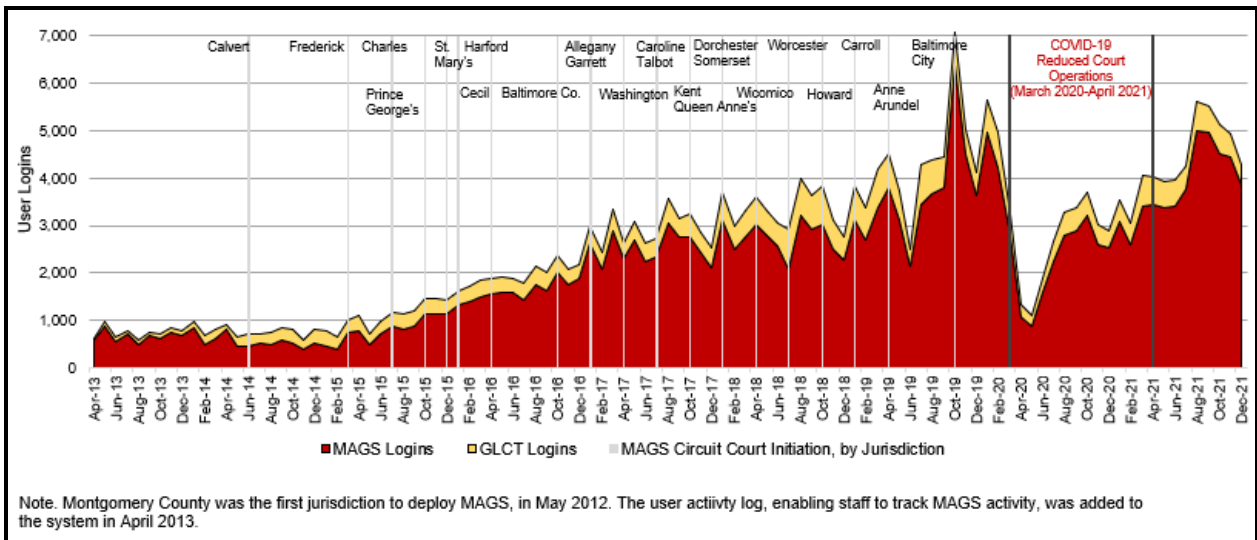
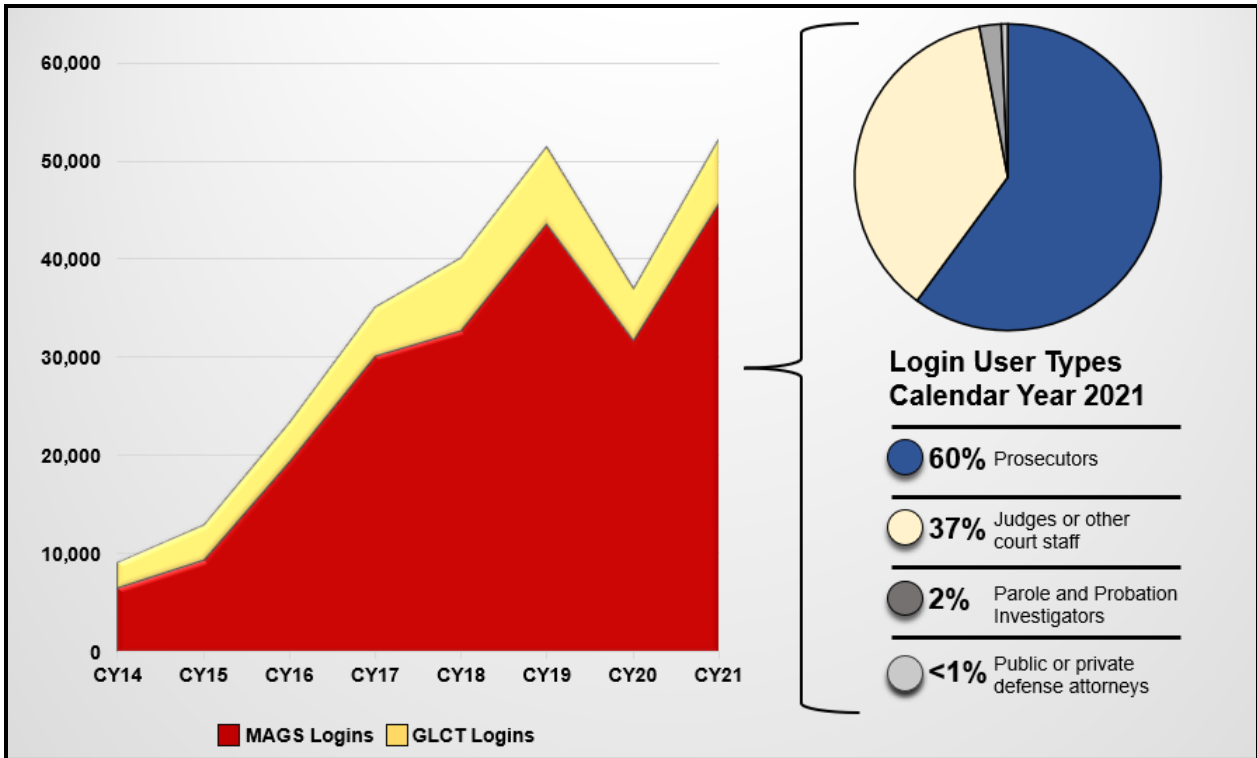
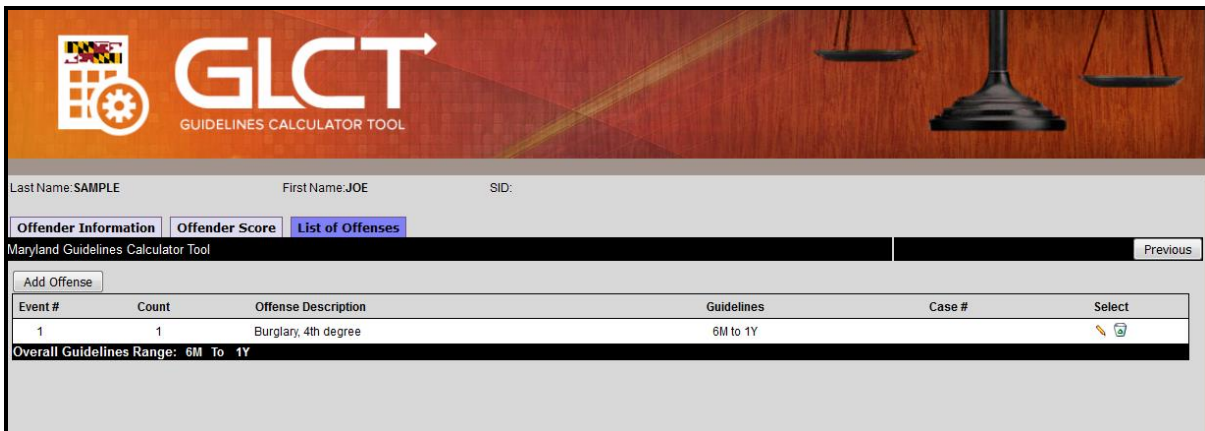


Figure 2. MAGS User Logins, by User Type, Calendar Years 2014 through 2021



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, the GLCT is still frequently utilized.

Image 3. Guidelines Calculator Tool (GLCT)



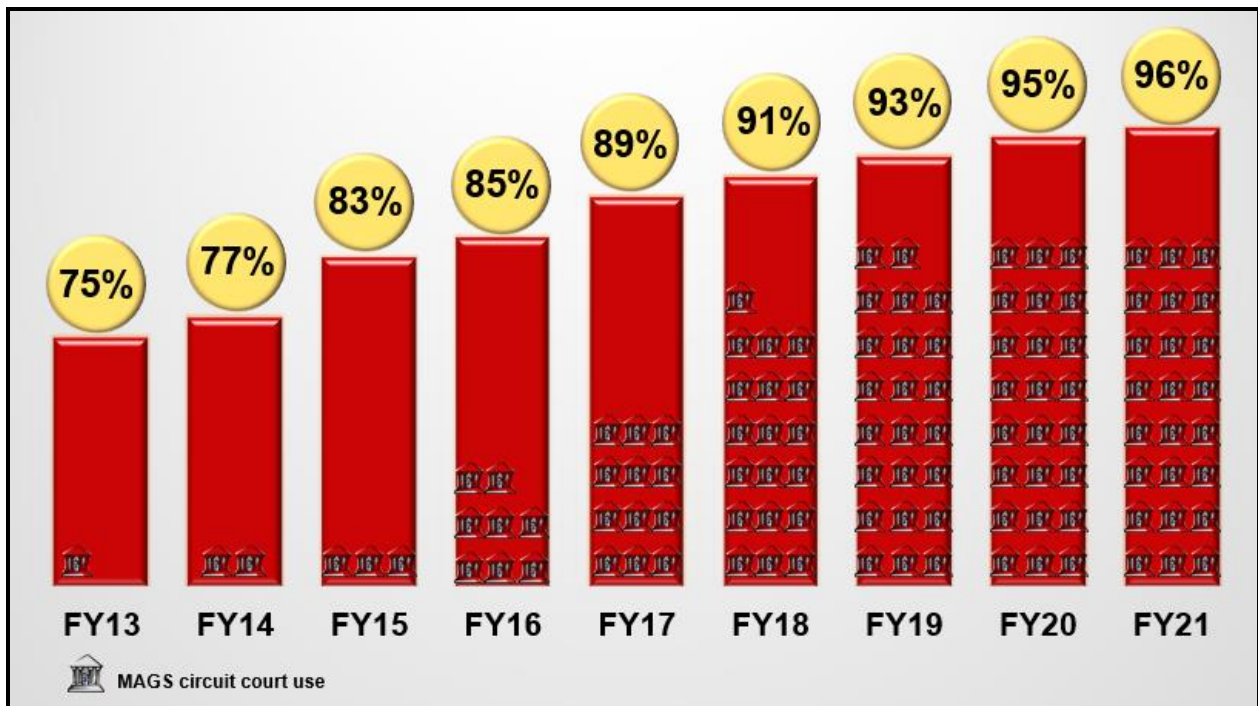
To aid in guidelines worksheet submission, in 2014 the MSCCSP staff began working with various State agencies to identify all guidelines-eligible cases sentenced in circuit courts, match these cases to guidelines worksheets received by the MSCCSP, and provide feedback

regarding worksheet submission rates to individual jurisdictions. 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.⁷ The Montgomery County Circuit Court (prior to deployment of the MDEC system in October 2021) 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 96% in fiscal year 2021 (see Figure 3). Additionally, the MSCCSP is coordinating with the AOC to implement a statewide, aggregated worksheet status report, though that implementation has been delayed until full deployment of the 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.

⁷ 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 2021



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 2021 public comments hearing occurred on December 7, 2021. Prior to the hearing, the MSCCSP distributed an invitation to key criminal justice stakeholders throughout the State via e-mail through the Commission's listserv. Additionally, the MSCCSP announced the hearing on the Commission's website, in the Maryland Register, on the Maryland General Assembly's hearing schedule, and through a press release by the DPSCS.

At the start of the public comments hearing, Executive Director Dr. Soulé provided a presentation on the history and mission of the MSCCSP. Then, during the public comments portion of the hearing, two individuals testified. First, the Honorable Judge Phillip Caroom, a senior judge from Anne Arundel County, testified on behalf of the Maryland Alliance for Justice Reform (MAJR). Judge Caroom's testimony addressed racial disparity in sentencing, data collected by the MSCCSP via sentencing guidelines worksheets, and racial disparity in probation violation hearings. Following Judge Caroom's testimony, the Honorable Albert J. Peisinger, Jr., the State's Attorney for Harford County, testified regarding the Commission's proposed modifications to the sentencing matrix for drug offenses. Mr. Peisinger provided

insight into how drug cases are handled by prosecutors and defense attorneys in Maryland and expressed his opinion on how adjustments to the sentencing matrix for drug offenses could affect plea negotiations.

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 10, 2022. The MSCCSP values the testimony provided by members of the public, as public participation is essential to creating awareness of sentencing issues.

SENTENCES REPORTED IN FY 2021

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 2021, the MSCCSP received sentencing guidelines worksheets for 6,387 sentencing events.⁸ The number of worksheets received was notably lower than a typical year due to the impact of the COVID-19 pandemic on court operations, as sentencing hearings were slowed or postponed in response to safety concerns.⁹ With a handful of exceptions, all of the fiscal year 2021 worksheets were submitted electronically using MAGS.¹⁰ The second and third columns of Table 9 illustrate the number and percentage of sentencing guidelines worksheets submitted in fiscal year 2021 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 (1,555), while the Second Circuit (Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties) submitted the fewest (351).

⁸ 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.

⁹ On March 5, 2020, Governor Hogan declared a State of Emergency in Maryland due to increasing COVID-19 cases. Court operations were reduced in accordance with Phase I restrictions on March 16, 2020. Courts remained in various phases of restricted operations through April 25, 2021. On April 26, 2021, the court moved to Phase V of their phased reopening schedule (i.e., fully operational). Source for Maryland courts' phased reopening schedule:

<https://www.courts.state.md.us/coronavirusphasedreopening>

¹⁰ Five of the 6,387 worksheets were submitted by e-mail to the MSCCSP. Occasionally worksheets cannot be submitted using MAGS, usually due to the fact that an offense in the sentencing event is not included in the MAGS offense table.

In fiscal year 2021, 6,981 guidelines-eligible cases were identified, and the MSCCSP received a paper worksheet or MAGS submission for 6,689 (95.8%) of the guidelines-eligible cases.¹¹ The sixth column of Table 9 indicates the percentage of guidelines-eligible cases with a submitted worksheet in fiscal year 2021 by judicial circuit. Worksheet submission rates ranged from 89.4% 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 9. Number and Percentage of Sentencing Guidelines Worksheets and Cases Submitted by Circuit, Fiscal Year 2021

Circuit	Number of Worksheets Submitted	Percent of Total Worksheets Submitted	Number of Guidelines-Eligible Cases Submitted	Total Number of Guidelines-Eligible Cases	Percent of Guidelines-Eligible Cases with Submitted Worksheet ¹²
1	452	7.1%	470	483	97.3%
2	351	5.5%	368	374	98.4%
3	1,555	24.3%	1,612	1,709	94.3%
4	424	6.6%	448	473	94.7%
5	1,018	15.9%	1,068	1,089	98.1%
6	1,054	16.5%	1,113	1,115	99.8%
7	963	15.1%	1,006	1,125	89.4%
8	570	8.9%	604	613	98.5%
TOTAL	6,387	100.0%	6,689	6,981	95.8%

¹¹ 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 2021.

¹² 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 the Uniform Court System (UCS) and MDEC.

Figure 4. Number and Percentage of Sentencing Guidelines Worksheets Submitted by Fiscal Year, Fiscal Years 2013 through 2021

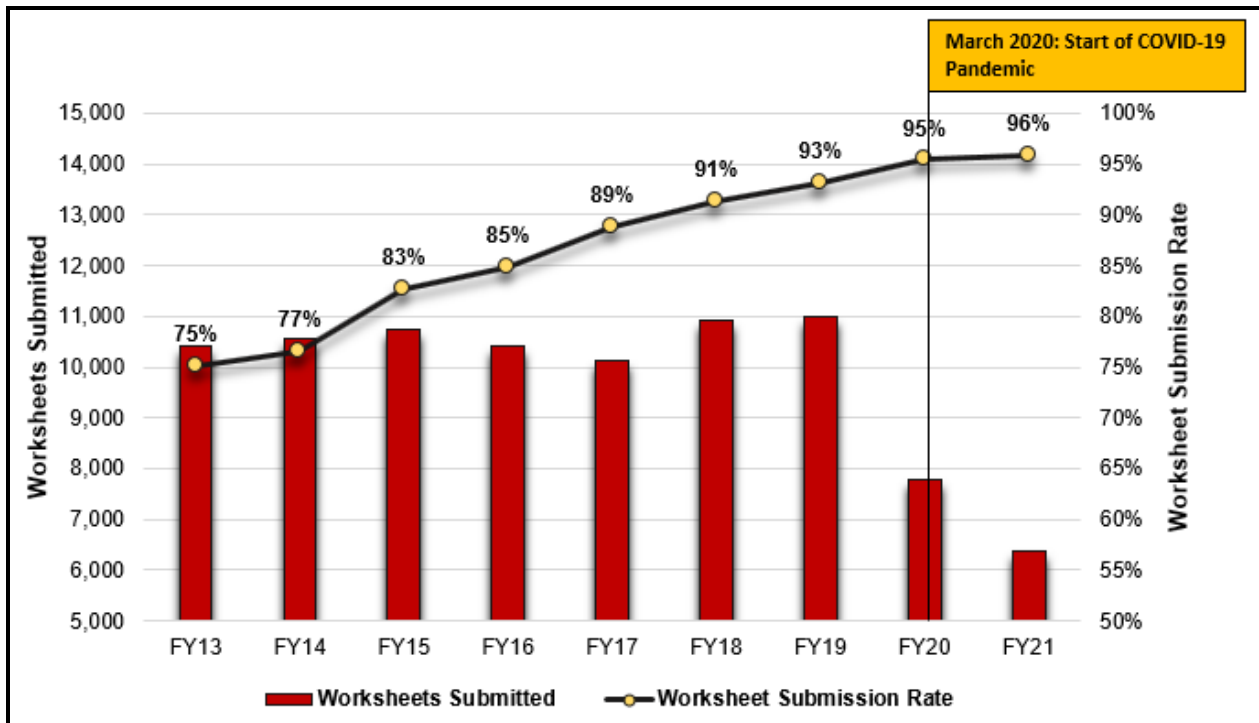


Image 4. Maryland Judicial Circuits



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

Offender Characteristics

Figures 5 through 10 summarize the offender characteristics from the 6,387 sentencing guidelines worksheets submitted for defendants sentenced in fiscal year 2021. Most offenders were male (87%) and African-American (57.9%). Approximately 8% 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 78 years of age. Fewer than 3% of offenders were under 18 years of age; 23% were 18-22 years old; 32% were 23-30 years old; 24% were 31-40 years old; and the remaining 19% were 41 years or older. The most common type of legal representation for offenders was a private defense attorney (50.6%), followed by a public defender (47.1%). 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 2021

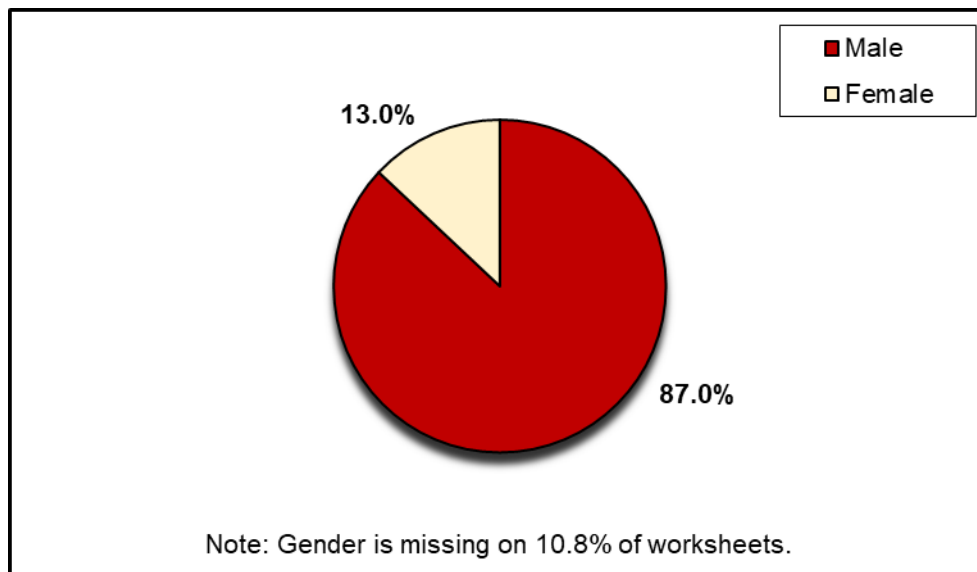


Figure 6. Distribution of Guidelines Sentencing Events by Race of Offender, Fiscal Year 2021¹³

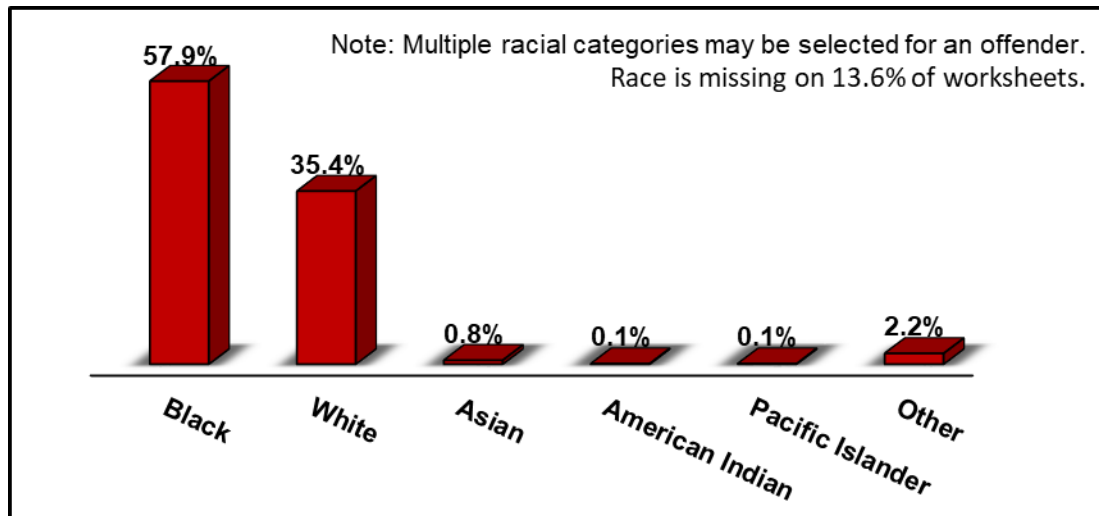
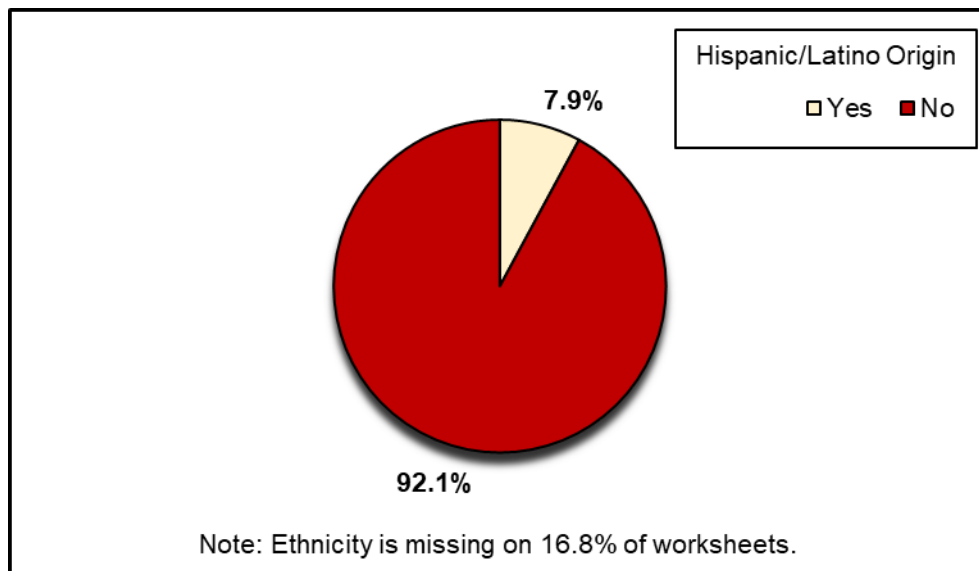


Figure 7. Distribution of Guidelines Sentencing Events by Ethnicity of Offender, Fiscal Year 2021¹⁴



¹³ 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. Effective April 1, 2021, race is a mandatory field in MAGS.

¹⁴ Effective April 1, 2021, ethnicity is a mandatory field in MAGS.

Figure 8. Distribution of Guidelines Sentencing Events by Age of Offender, Fiscal Year 2021

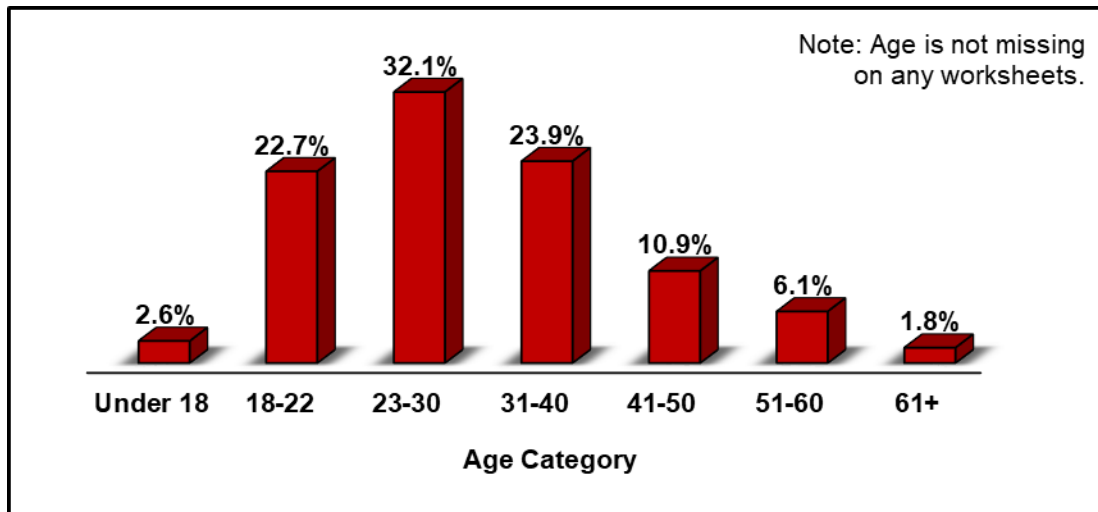


Figure 9. Distribution of Guidelines Sentencing Events by Type of Legal Representation of Offender, Fiscal Year 2021

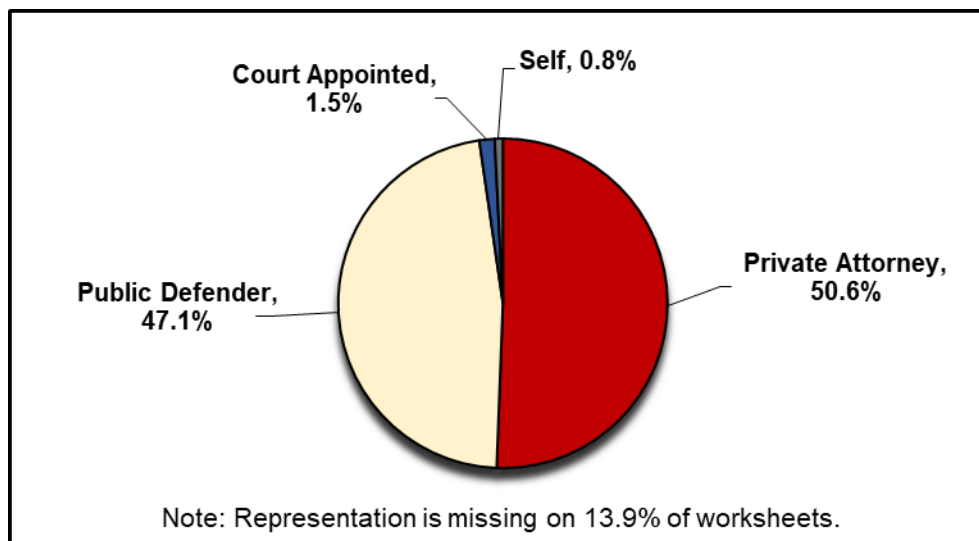
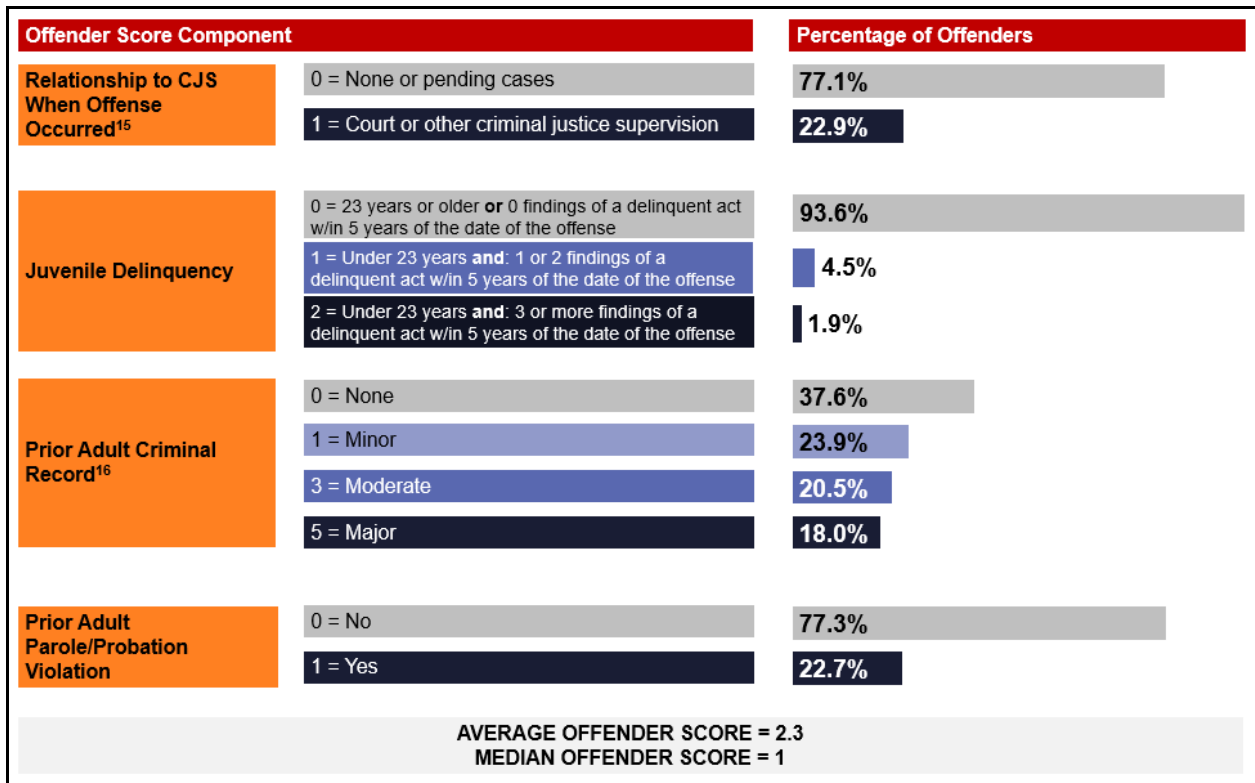


Figure 10 shows the distribution of guidelines sentencing events by the four components of the offender score. The offender score provides a measure of the defendant’s prior criminal history and ranges from 0 to 9. The second column of Figure 10 details the point values for each of the components of the offender score. The average offender score in fiscal year 2021 was 2.3. The median or middle score was 1. One-third (33.2%) 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, more than three-quarters of offenders had no relationship to the criminal justice system when the instant offense occurred (77.1%). Similarly, 77.3% had no prior adult parole or probation violations, and slightly less than 7% received points for a juvenile

record. Greater variability was observed for the prior adult criminal record component of the offender score, with approximately 38% of offenders with no record and the remaining offenders divided fairly equally among the minor (23.9%), moderate (20.5%), and major (18%) prior adult criminal record categories.

Figure 10. Distribution of Guidelines Sentencing Events by Offender Score, Fiscal Year 2021



Offense Characteristics

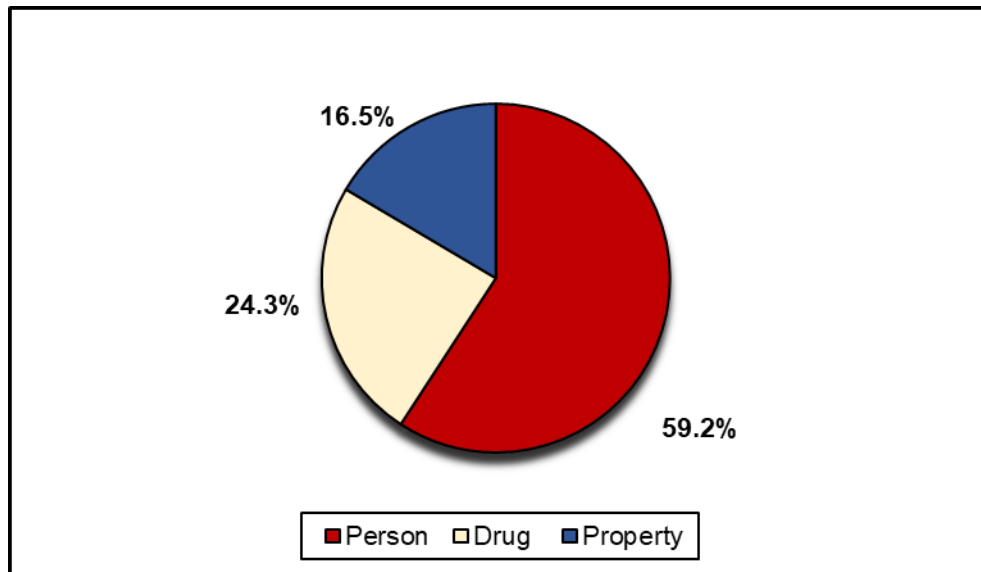
Figures 11 through 16 summarize the offense characteristics from the 6,387 sentencing guidelines worksheets submitted for defendants sentenced in fiscal year 2021. Figure 11 provides a breakdown of guidelines sentencing events by crime category. For sentencing events involving multiple offenses, the figure considers only the most serious offense.

¹⁵ For sentencing events involving multiple offenses, the relationship to CJS may differ between offenses committed on different dates. The figure considers only the relationship to CJS at the time of the most serious offense.

¹⁶ 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 3.2% of electronic guidelines worksheets in fiscal year 2021.

Sentencing events involving a person offense were most common (59.2%), followed by those involving a drug offense (24.3%). In 16.5% of sentencing events, the most serious offense was a property crime. The distribution of sentencing events by crime category followed a similar pattern when limiting the analysis to defendants sentenced to incarceration (64.7% person, 20.7% drug, 14.6% property).¹⁷

Figure 11. Distribution of Guidelines Sentencing Events by Crime Category, Fiscal Year 2021



Figures 12, 13, and 15 display the distribution of guidelines offenses by offense seriousness category for each of the three crime categories. Among drug offenses, offenses with seriousness categories IIIB (45.8%), IV (26.2%), and VII (26.2%) were most common. The five most frequent drug offenses were *Distribution of cocaine* (IIIB), *Distribution of marijuana* (IV), *Possession of marijuana* (VII), *Distribution of fentanyl* (IIIB), and *Possession of cocaine* (VII).

¹⁷ Incarceration includes home detention and credited time, as well as post-sentence jail/prison time.

Figure 12. Distribution of Drug Offenses by Seriousness Category, Fiscal Year 2021

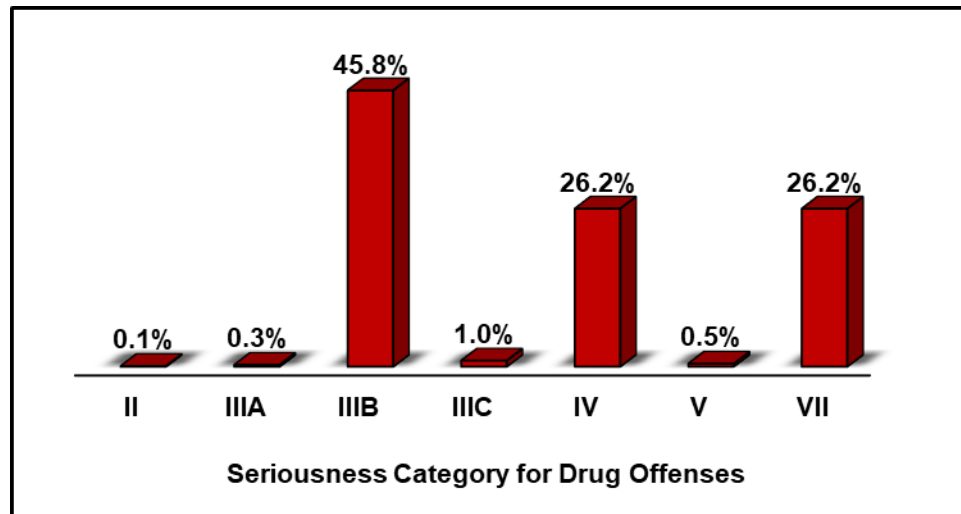
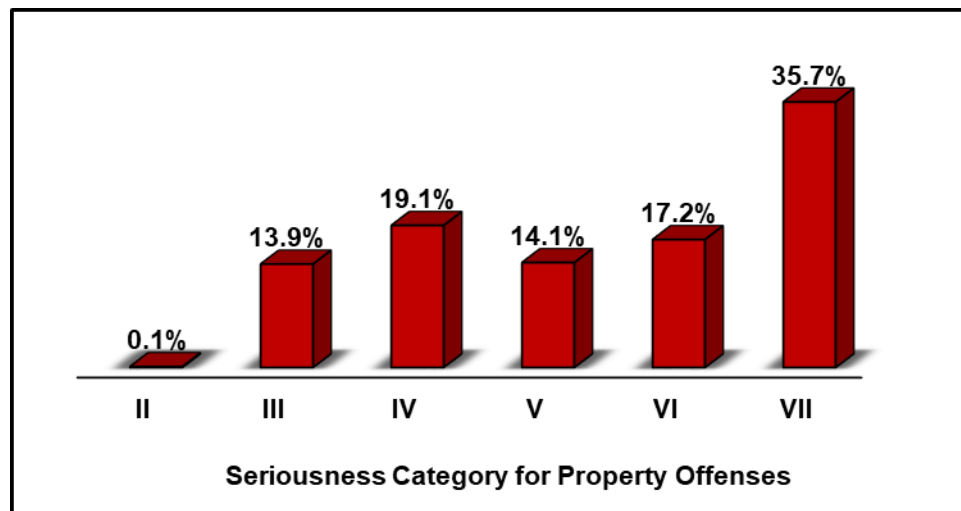


Figure 13 provides the distribution of property offenses by seriousness category. Offenses with a seriousness category VII were most common (35.7%). In contrast, fewer than 1% of property offenses in fiscal year 2021 were seriousness category II offenses. The five most frequent property offenses were *Burglary, 2nd degree* (IV); *Burglary, 1st degree* (III); *Burglary, 4th degree* (VII); *Felony theft or theft scheme of at least \$1,500 but less than \$25,000* (VI); and *Misdemeanor theft or theft scheme of at least \$100 but less than \$1,500* (VII).

Figure 13. Distribution of Property Offenses by Seriousness Category, Fiscal Year 2021



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.¹⁸ In fiscal year 2021, sentencing guidelines worksheets reported 584 sentences for theft, fraud, and related crimes. Figure 14 shows that in 396 (67.8%) of these sentences, an actual dollar amount to indicate the economic loss to the victim was recorded. *Unknown amount* was marked for 188 (32.2%) of 584 theft and fraud related offenses. When reported, economic loss ranged in value from a minimum of no loss to a maximum of \$770,718. The mean (average) amount of loss was \$22,251, while the median (middle) amount of loss was \$842. 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 of at least \$1,500 but less than \$25,000* was the most common offense in which the amount of economic loss was reported on the sentencing guidelines worksheet.

Figure 14. Economic Loss for Theft- and Fraud-Related Offenses, Fiscal Year 2021

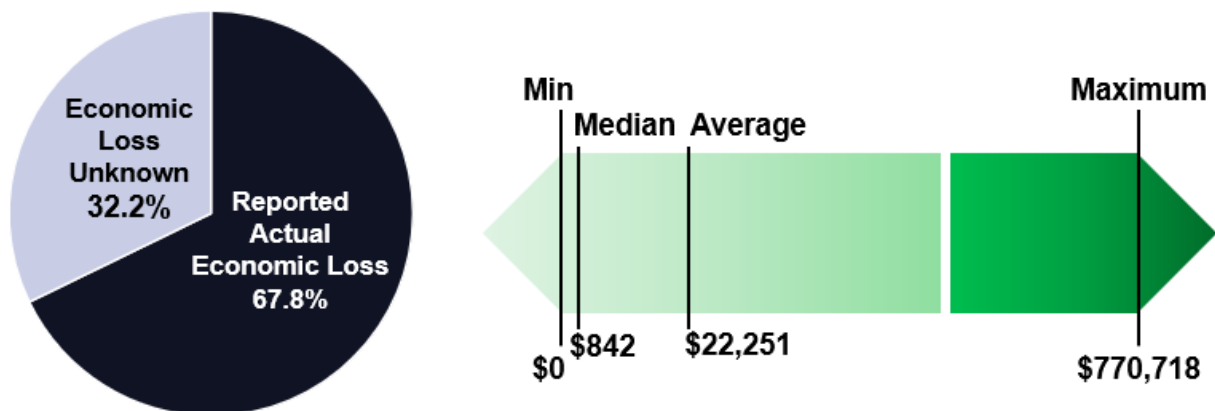


Figure 15 summarizes the distribution of person offenses by seriousness category. Offenses with a seriousness category V were most common (37.4%), followed by offenses with a seriousness category III (17.2%). The five most frequent offenses were *Assault, 2nd degree* (V); *Robbery* (IV); *Robbery with a dangerous weapon* (III); *Possession of a regulated firearm by a restricted person* (VI); and *Assault, 1st degree* (III).

¹⁸ 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 15. Distribution of Person Offenses by Seriousness Category, Fiscal Year 2021

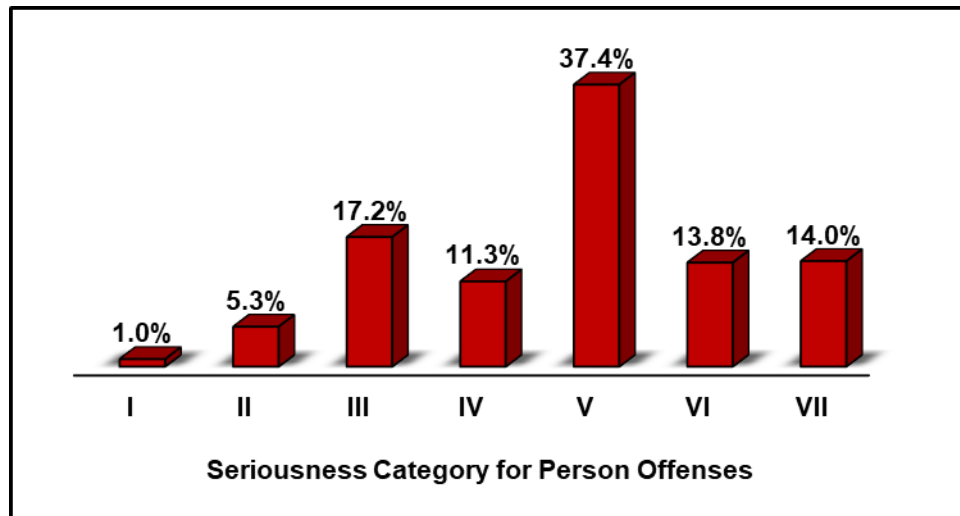
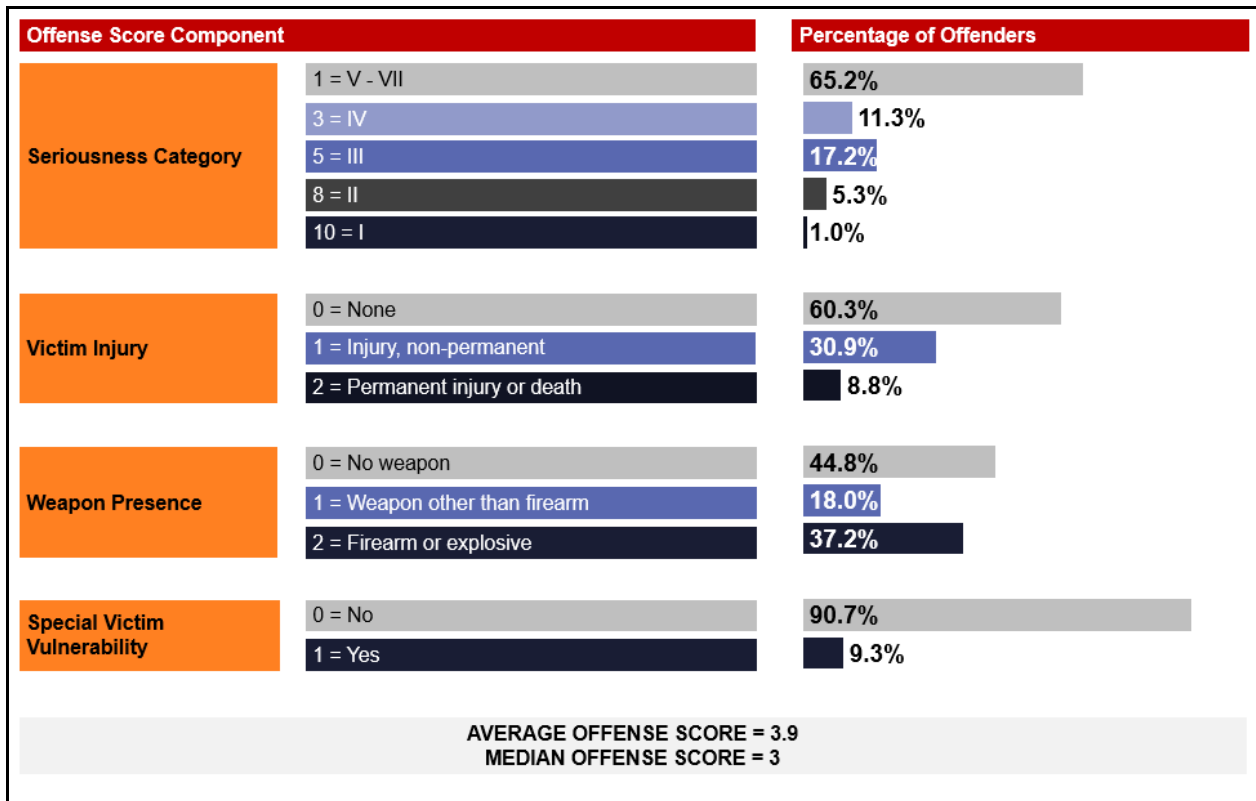


Figure 16 displays the distribution of person offenses by the four components of the offense score. The offense score provides a measure of the seriousness of an offense against a person and ranges from 1 to 15. The second column of Figure 16 details the point values for each of the components of the offense score for person offenses. The average offense score for person offenses in fiscal year 2021 was 3.9. The median or middle score was 3. The majority of person offenses (65.2%) had a seriousness category of V, VI, or VII. Approximately 60% of person offenses involved no injury to the victim, although more than half (55.2%) involved a weapon. Finally, 9.3% 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 16. Distribution of Person Offenses by Offense Score, Fiscal Year 2021



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 17 through 19 detail the responses to these items in fiscal year 2021. 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 37.8% of worksheets, and nearly half of all worksheets (49.7%) were missing information on whether there was a victim. The figures presented here are limited to the subset of cases with valid victim-related data.

Figure 17 indicates that victim-related court costs were imposed in 45.6% 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 18 illustrates that 61% of worksheets with valid information on the victim-related questions indicated there was a victim.

Figure 17. Distribution of Guidelines Sentencing Events by Whether Victim-Related Court Costs Imposed, Fiscal Year 2021

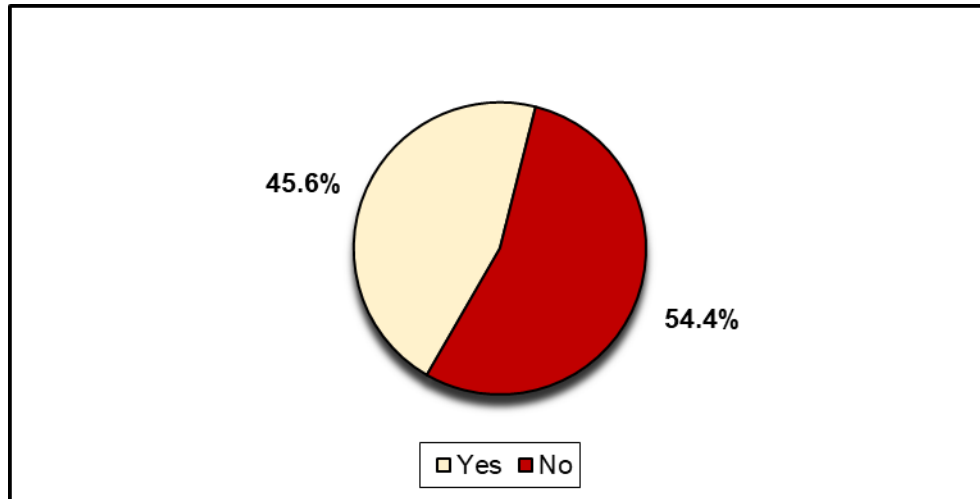
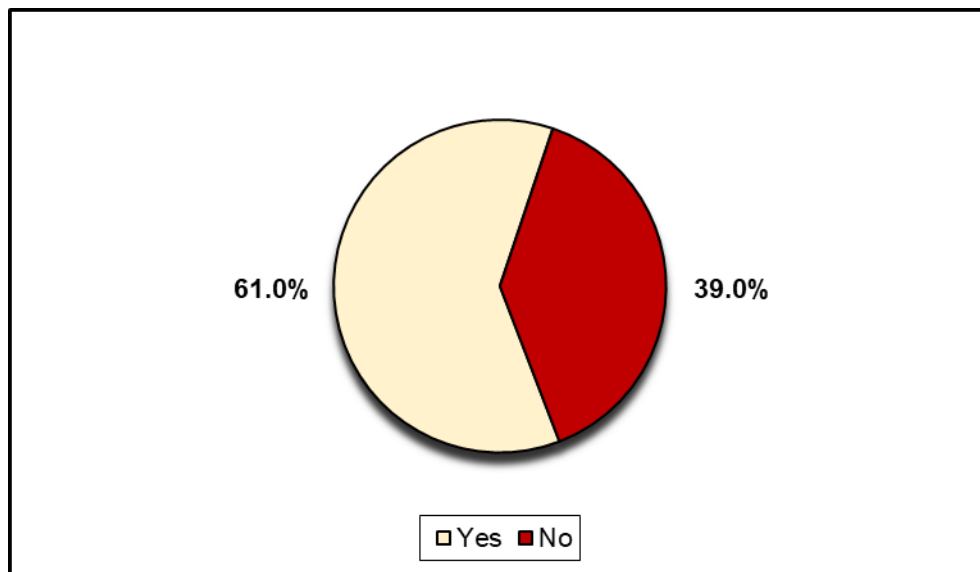


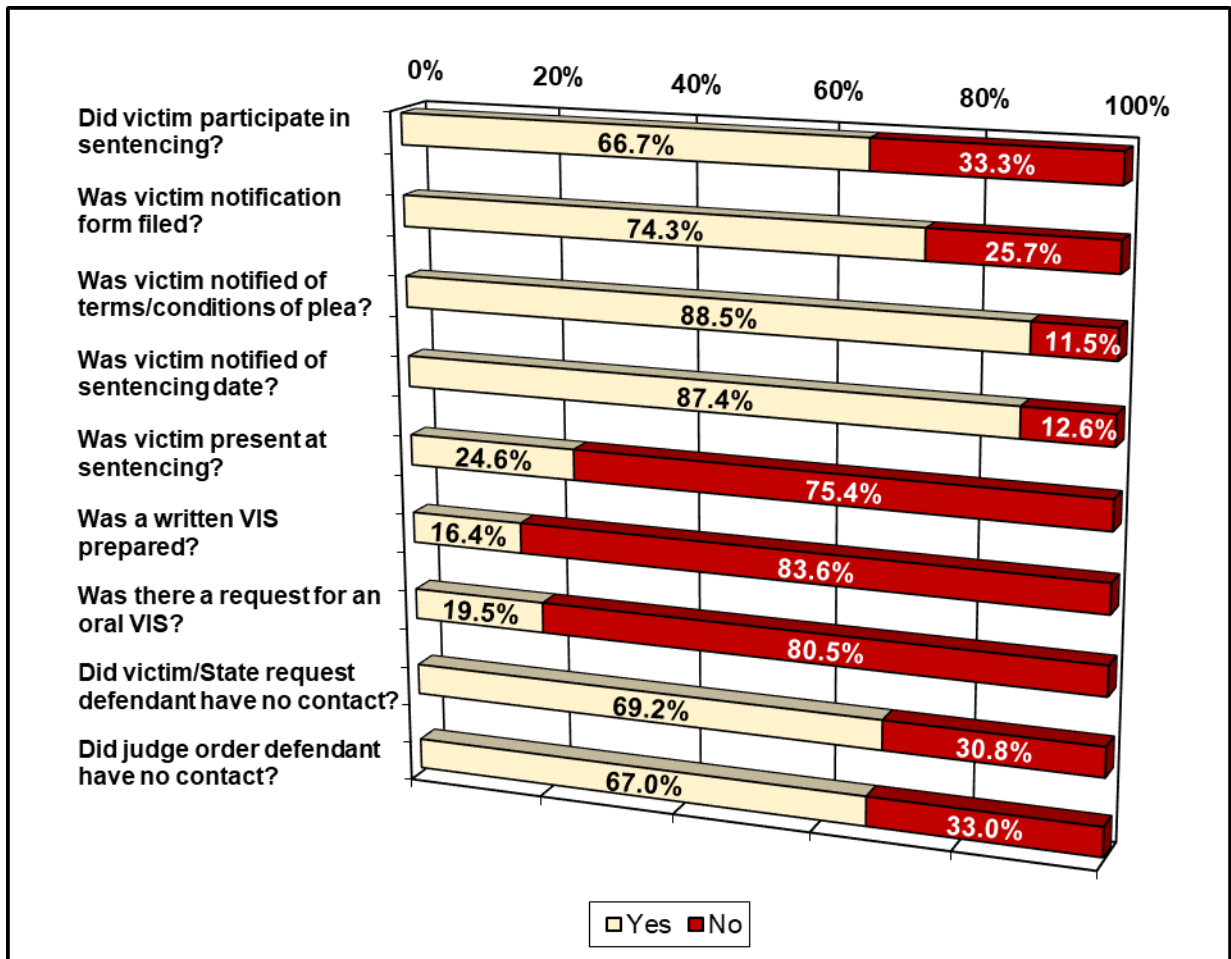
Figure 18. Distribution of Guidelines Sentencing Events by Whether Victim Involved, Fiscal Year 2021



The responses to the items in the *Victim Information* section of the worksheet for sentencing events involving a victim are summarized in Figure 19. In one-third 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 74.3% of sentencing events. Most victims (88.5%) were notified of the terms and conditions of a plea agreement prior to entry of a plea. Similarly, 87.4% of victims

were notified of the court date for sentencing. Approximately one-quarter of victims (24.6%) were present at sentencing. A written Victim Impact Statement (VIS) was prepared in 16.4% of sentencing events involving a victim, while the victim or State made a request for an oral VIS in 19.5% of sentencing events. Finally, the victim or State made a request that the defendant have no contact with the victim in 69.2% of sentencing events, and the sentencing judge ordered the defendant to have no contact with the victim in 67% of sentencing events involving a victim.

Figure 19. Distribution of Guidelines Sentencing Events by Victim Information, Fiscal Year 2021



Disposition and Sentence Characteristics

Figures 20 through 24 and Tables 10 through 12 summarize the disposition and sentence characteristics, including the use of corrections options and other alternatives to incarceration, from the 6,387 sentencing guidelines worksheets submitted for defendants sentenced in fiscal year 2021. Figure 20 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 a binding plea agreement (42.2%) or other plea agreement (37.7%). An additional 17.7% were resolved by a plea with no agreement, and 2.4% of sentencing events were resolved by either a bench or jury trial (.8% and 1.6%, respectively).

Figure 20. Distribution of Guidelines Sentencing Events by Disposition, Fiscal Year 2021

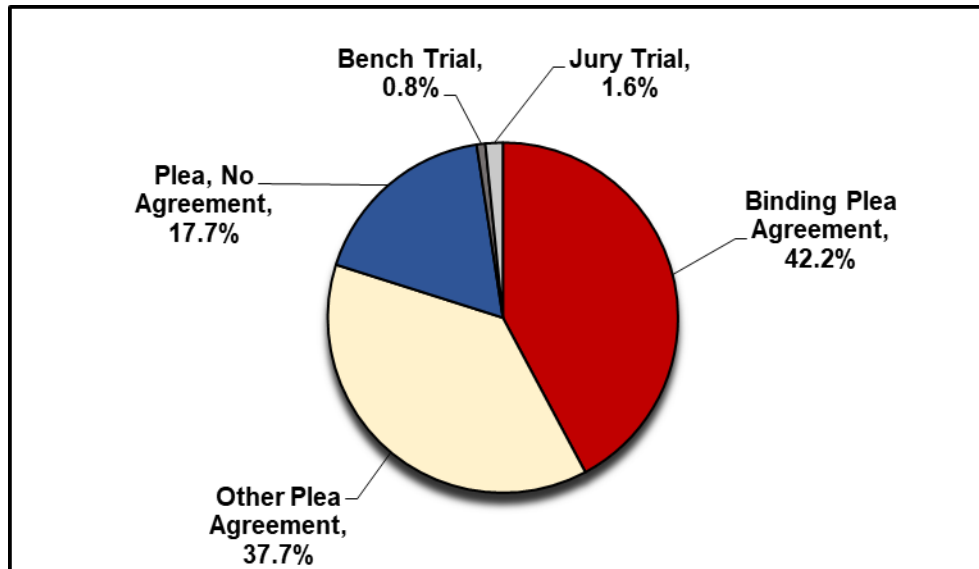
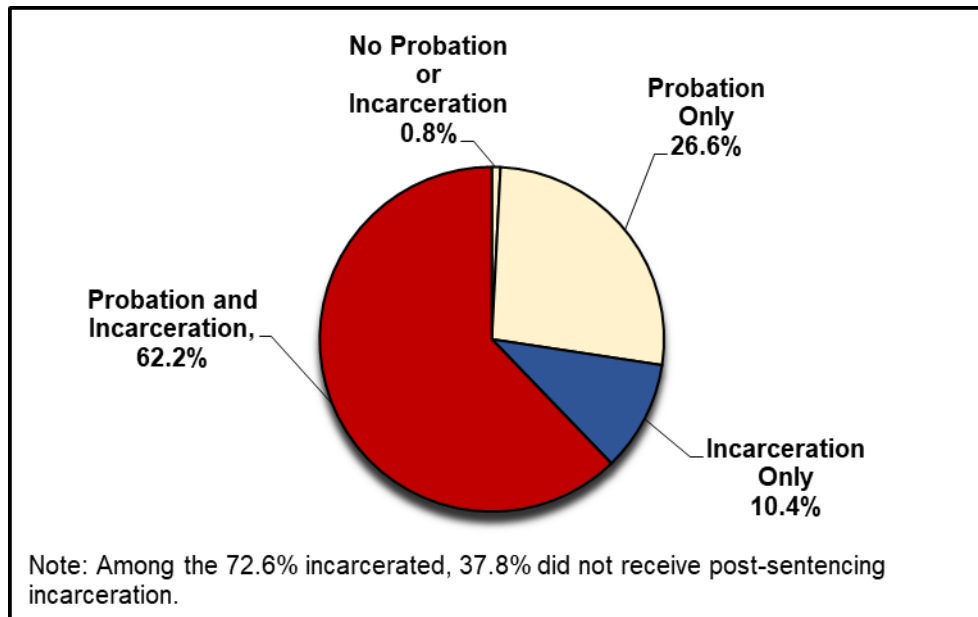


Figure 21 displays the distribution of guidelines sentencing events by sentence type. Note that incarceration includes home detention and credited time, as well as post-sentence jail/prison time. Few offenders (.8%) received a sentence that did not include either incarceration or probation. One-quarter (26.6%) received sentences to probation only. Approximately 10% of offenders received sentences to incarceration only. More than half (62.2%) of all sentencing events resulted in a sentence to both incarceration and probation. Among those incarcerated, 37.8% did not receive post-sentencing incarceration.

Figure 21. Distribution of Guidelines Sentencing Events by Sentence Type, Fiscal Year 2021



Figures 22a and 22b 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 (2012-2021), 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 22a indicates that the percentage of offenders sentenced to incarceration during the past ten fiscal years was lowest in fiscal year 2021 (72.6%), a decrease of more than 5 percentage points from 78.2% in 2020. Similarly, the percentage of offenders incarcerated post-sentence was at its lowest in fiscal year 2021 (45.2%), declining nearly 9 percentage points from 53.9% in 2020. These decreases are likely related to the COVID-19 pandemic and concerted efforts to divert offenders from incarceration when feasible to minimize the risk of COVID-19 transmission in jails and prisons.

Figure 22a. Incarceration Rates for Guidelines Sentencing Events, by Fiscal Year

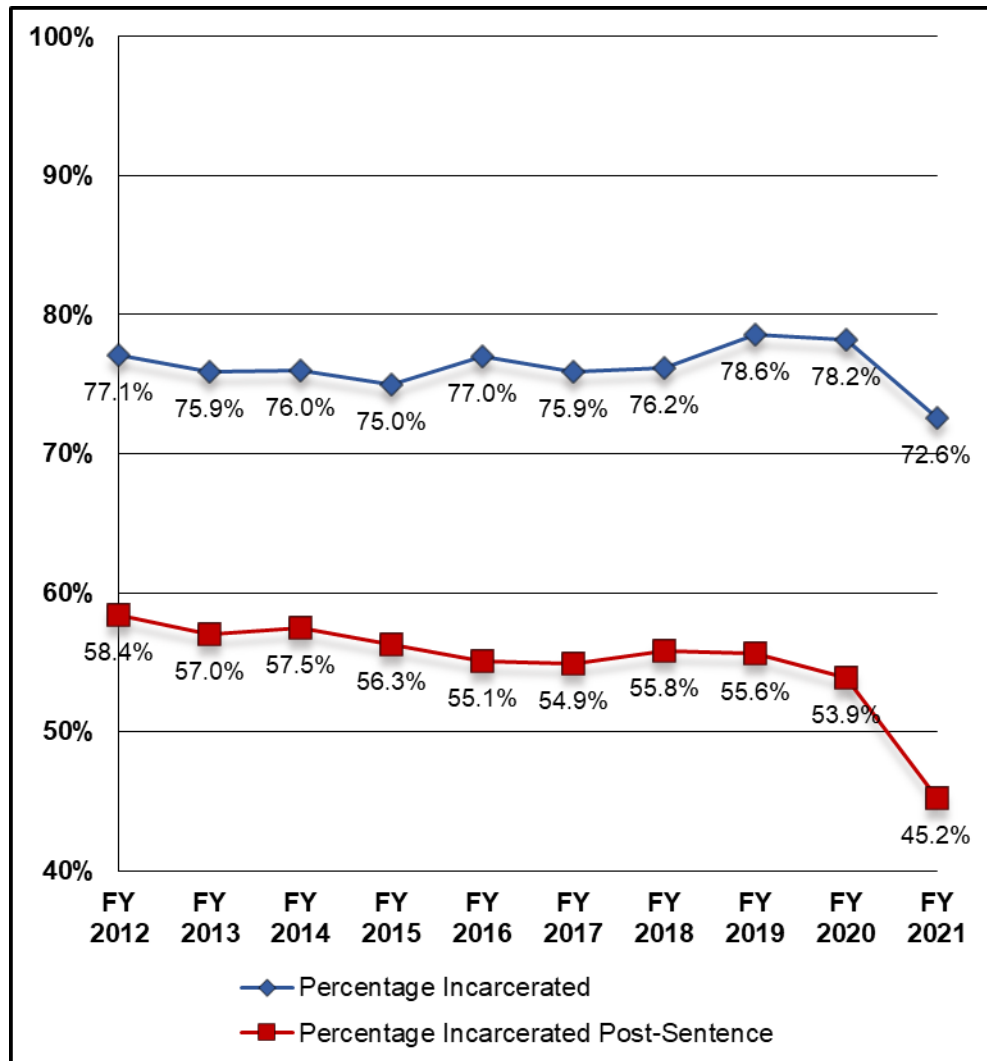


Figure 22b indicates a similar decline in the typical sentence length among those incarcerated. Sentence lengths decreased in the past fiscal year from 4.4 years to 3.7 years, with the median (middle) sentence remaining unchanged at its lowest point (1 year). The fact that the mean is larger than the 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 22a and 22b suggest that COVID-19-related concerns were an important factor in sentencing during fiscal year 2021.

Figure 22b. Length of Sentence for Guidelines Sentencing Events, by Fiscal Year

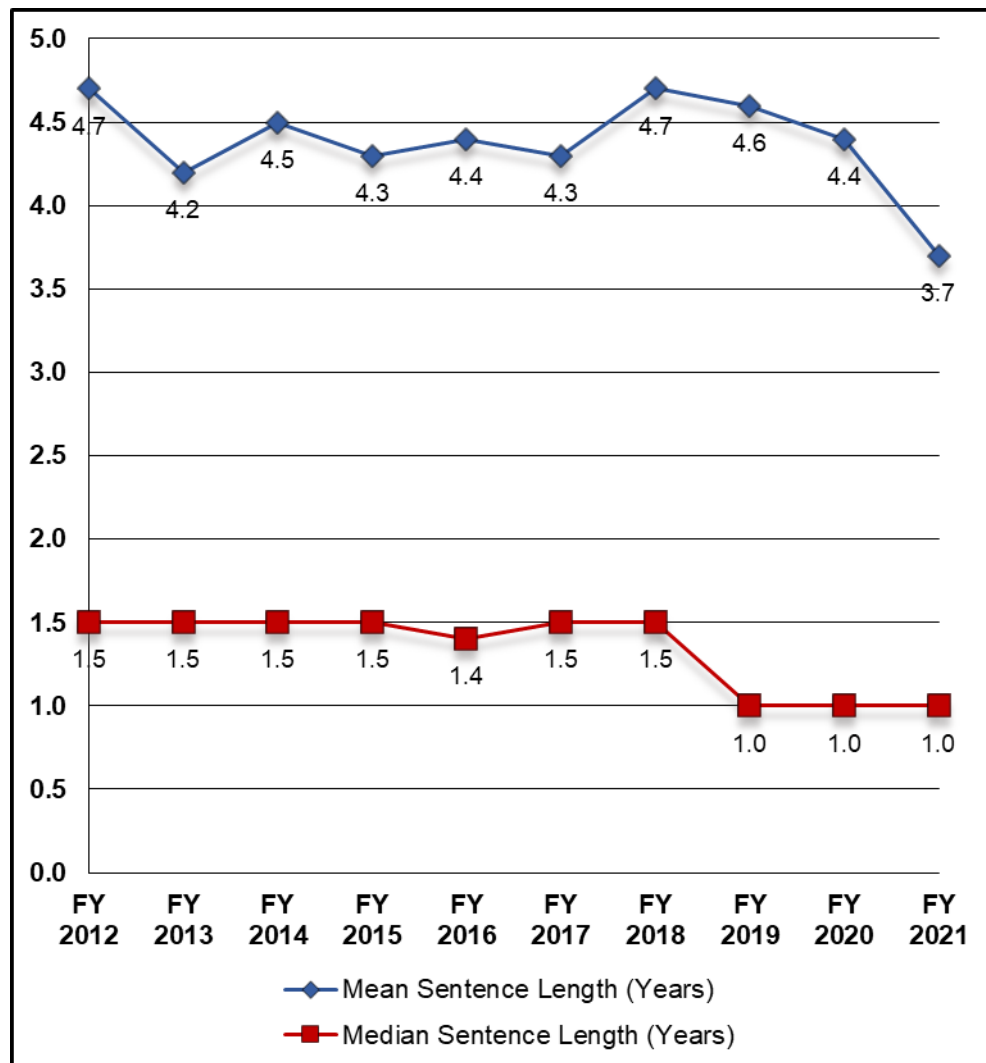


Figure 23 displays the percentage of sentencing events that utilized one or more corrections options or other alternatives to incarceration. Corrections options are defined as home detention, work release, weekend (or other discontinuous) incarceration, inpatient substance abuse treatment, inpatient 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.¹⁹ Other alternatives to incarceration include outpatient substance abuse treatment,

¹⁹ Prior to April 1, 2021, the sentencing guidelines worksheet permitted users to write-in "other" corrections options. This field was intended to provide users with 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 all but one of 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. The one "other" corrections option that met the commission's criteria for corrections options indicated inpatient treatment, though the type of treatment was not specified. Those other corrections options that were consistent with one of the defined

outpatient mental health treatment, and other programs. A defendant's sentence may include multiple corrections options and/or alternatives to incarceration. In fiscal year 2021, 13.3% of guidelines-eligible sentencing events utilized corrections options and/or other alternatives to incarceration, with 7.8% of sentencing events involving corrections options, 4.8% involving other alternatives to incarceration, and less than 1% involving both corrections options and other alternatives to incarceration.²⁰

Figure 23. Corrections Options and Other Alternatives to Incarceration Utilized, Fiscal Year 2021

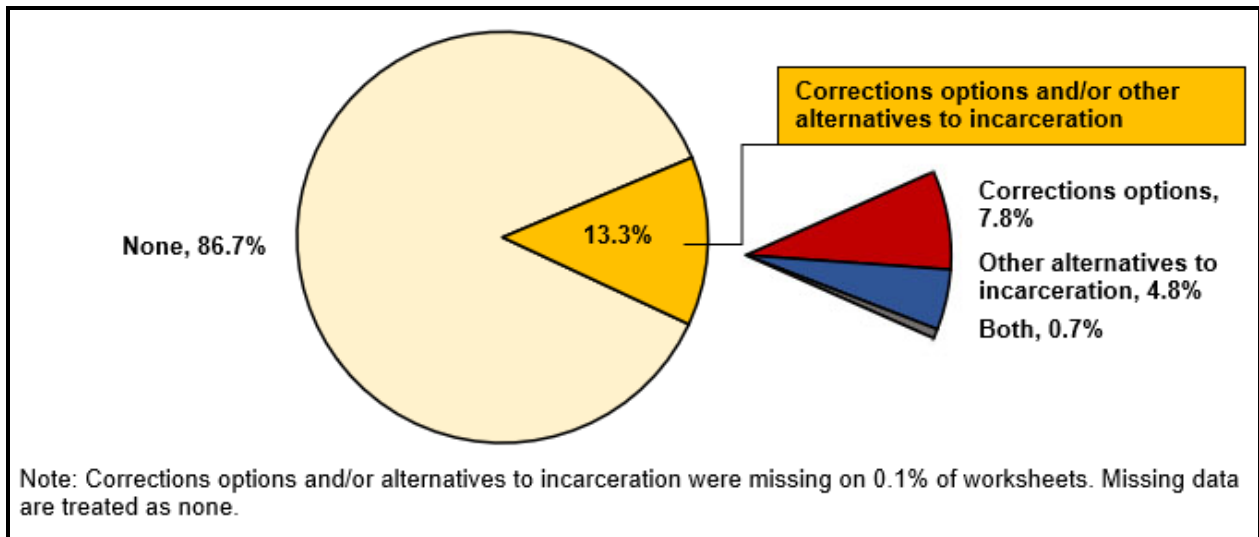


Table 10 details the specific type of corrections options imposed. Among those sentencing events involving one or more corrections options, the most common corrections option utilized was home detention (42.6%), followed by drug court (19.7%) and inpatient substance abuse treatment (13.5%).

categories of corrections options are included in the totals for the respective categories. Less than one percent (0.5%) of all sentencing events recorded an "other" corrections option that did not meet the Commission's criteria. Effective April 1, 2021, the "other" corrections options field was removed from the sentencing guidelines worksheet.

²⁰ 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 10. Corrections Options Utilized, Fiscal Year 2021

Corrections Options	Percent of Total Sentencing Events	Percent of Sentencing Events that Involve One or More Corrections Options
<i>One or more corrections option imposed</i>	8.5%	---
Home detention	3.6%	42.6%
Drug court	1.7%	19.7%
Inpatient substance abuse treatment	1.1%	13.5%
HG, § 8-507 order	0.9%	10.5%
Work release	0.7%	7.7%
Inpatient mental health treatment	0.6%	6.8%
Other problem-solving court	0.4%	4.6%
Weekend (or other discontinuous) incarceration	0.3%	3.5%
Suspended sentence per CR, § 5-601(e)	0.1%	1.3%

Table 11 details the specific alternatives to incarceration utilized. Outpatient substance abuse treatment was the most common other alternative to incarceration. Over half (65.3%) of sentencing events involving other alternatives to incarceration included outpatient substance abuse treatment. Among sentencing events involving other alternatives to incarceration, 35.8% of sentencing events included outpatient mental health treatment. Approximately 40.6% of sentencing events involving other alternatives to incarceration included other programs. Commonly cited other programs include sex offender supervision and/or treatment, the Abuser Intervention Program, and anger management classes.

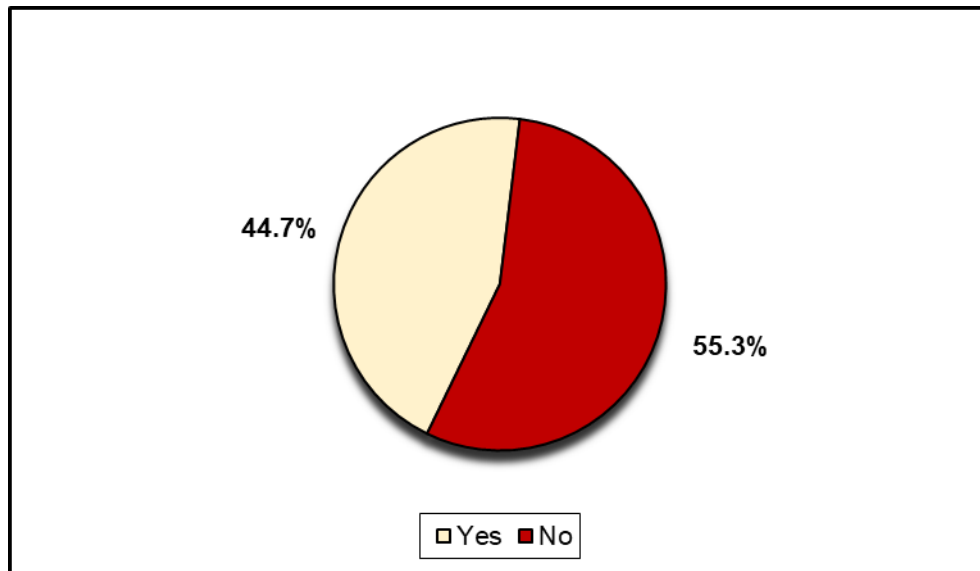
Table 11. Other Alternatives to Incarceration Utilized, Fiscal Year 2021

Other Alternatives to Incarceration	Percent of Total Sentencing Events	Percent of Sentencing Events that Involve One or More Other Alternatives to Incarceration
<i>One or more other alternatives to incarceration imposed</i>	5.5%	---
Outpatient substance abuse treatment	3.6%	65.3%
Outpatient mental health treatment	2.0%	35.8%
Other alternatives to incarceration ²¹	2.2%	40.6%

Pursuant to CP, § 6-217, when a sentence of confinement 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 2021, 1,046 sentencing guidelines events contained a sentence of confinement for a violent crime. Figure 24 indicates that among these sentencing events, the announcement concerning the mandatory serving of 50% of the sentence was made 44.7% of the time.

²¹ 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.

Figure 24. Distribution of Guidelines Sentencing Events by Whether 50% Announcement Was Made, Fiscal Year 2021



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 sentences²² 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 12 reviews reconsidered sentences reported to the MSCCSP for crimes of violence as defined in CR, § 14-101 for fiscal year 2021 by judicial circuit. Reconsidered sentences were reported for 77 offenders and 113 offenses. *Robbery with a dangerous weapon* was the most common crime of violence in reconsidered cases reported to the MSCCSP in fiscal year 2021.

²² 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 12. Reconsiderations for Crimes of Violence (CR, § 14-101), Fiscal Year 2021²³

Circuit	Offense	N
FIRST	Robbery	1
	Robbery with Dangerous Weapon	1
SECOND	Murder, 2 nd Degree	1
	Robbery	1
	Robbery with Dangerous Weapon	3
THIRD	Assault, 1 st Degree	1
	Carjacking, Unarmed	1
	Murder, 1 st Degree	1
	Rape, 1 st Degree	1
	Robbery	3
	Robbery with Dangerous Weapon	1
	Sex Offense, 1 st Degree	1
FOURTH	Murder, 1 st Degree	1
	Robbery	1
	Robbery with Dangerous Weapon	4
FIFTH	Assault, 1 st Degree	1
	Carjacking, Unarmed	1
	Firearm Use in Felony or Crime of Violence	2
	Murder, 1 st Degree	1
	Murder, 2 nd Degree, Attempted	1
	Rape, 1 st Degree	1
	Robbery	4
	Robbery with Dangerous Weapon	10
SIXTH	Assault, 1 st Degree	8
	Carjacking, Armed	2
	Child Abuse, Sexual	1
	Firearm Use in Felony or Crime of Violence	2
	Home Invasion	1
	Kidnapping	1
	Murder, 1 st Degree	3
	Murder, 2 nd Degree	1
	Rape, 2 nd Degree	2
	Robbery	2
	Robbery with Dangerous Weapon	12
SEVENTH	Assault, 1 st Degree	2
	Firearm Use in Felony or Crime of Violence	1
	Robbery with Dangerous Weapon	1

²³ Table 12 identifies reconsidered sentences for 77 offenders and 113 offenses.

Circuit	Offense	N
EIGHTH	Assault, 1 st Degree	9
	Child Abuse, Sexual	1
	Firearm Use in Felony or Crime of Violence	6
	Murder, 1 st Degree	4
	Murder, 1 st Degree, Attempted	2
	Murder, 2 nd Degree	2
	Murder, 2 nd Degree, Attempted	2
	Rape, 2 nd Degree	1
	Robbery	2
	Robbery with Dangerous Weapon	2

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.

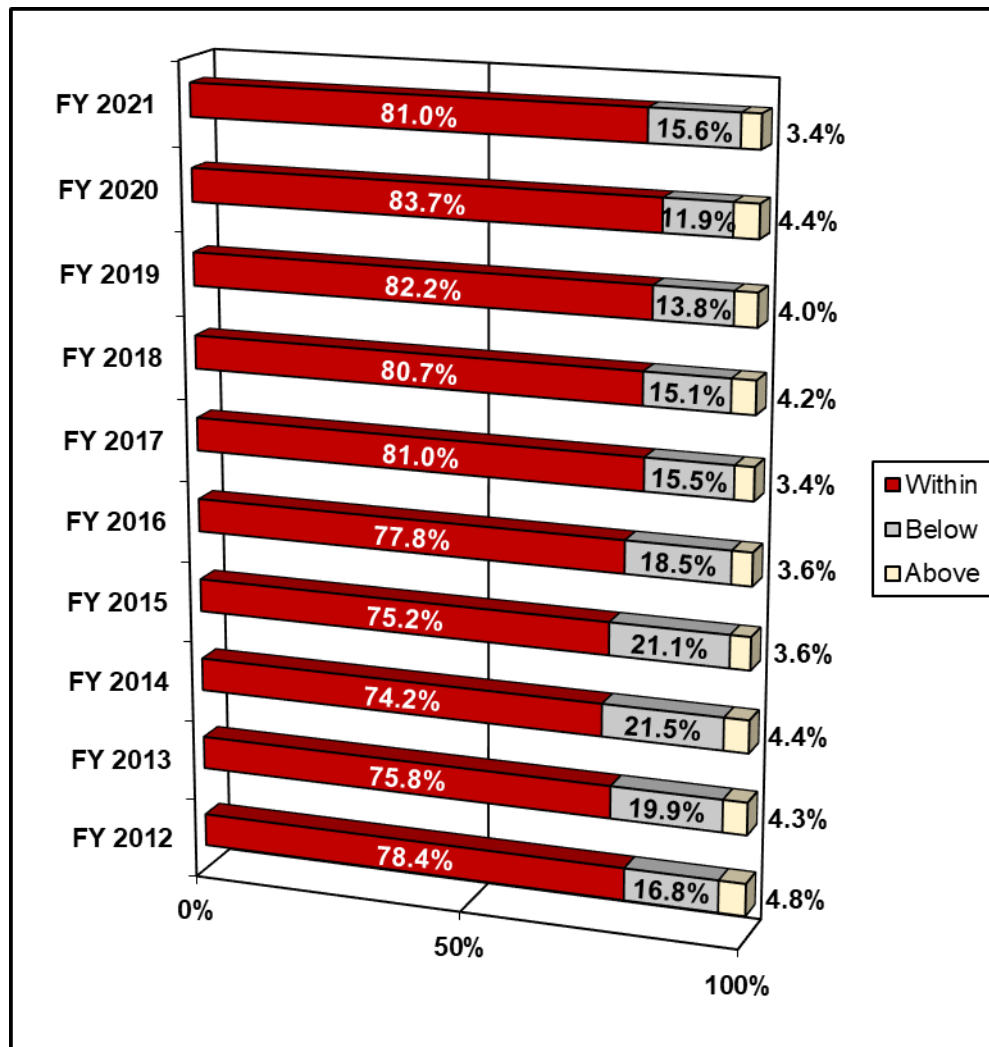
Judicial Compliance Rates Overall

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 MSCCSP binding plea agreement are guidelines-compliant (COMAR 14.22.01.17).²⁴ The MSCCSP adopted the binding plea agreement compliance policy in 2001 to acknowledge that binding plea agreements reflect the consensus of the local view of an appropriate sentence within each specific community. The corrections options and binding 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 25 illustrates the overall guidelines compliance rates for the past ten fiscal years (2012-2021). 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 (83.7%).

²⁴ For sentencing events prior to April 1, 2021, "binding plea agreement" refers to sentences resolved by an ABA plea agreement. For sentencing events on or after April 1, 2021, "binding plea agreement" refers to sentences resolved by an MSCCSP binding plea agreement. See Appendix D for definitions.

**Figure 25. Overall Sentencing Guidelines Compliance by Fiscal Year
(All Sentencing Events)**

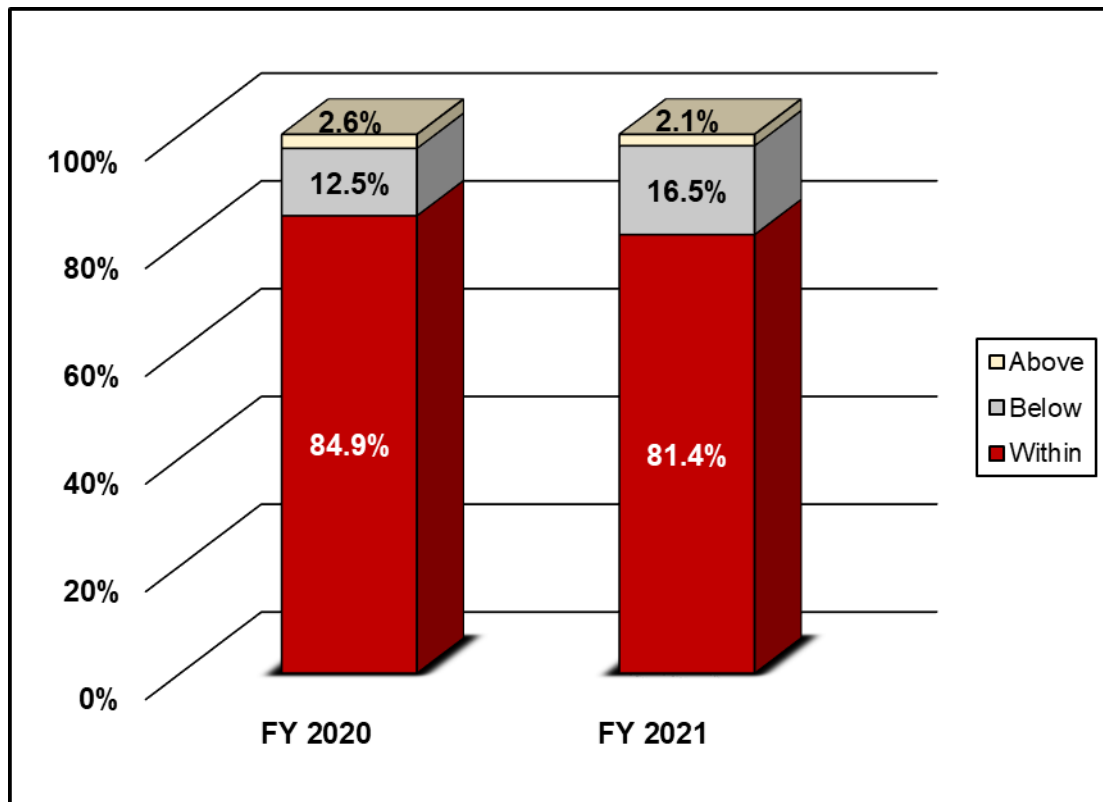


Analyses of judicial compliance in Maryland traditionally focus on sentences for single-count convictions, excluding reconsiderations and three-judge panel reviews, because they permit the most direct comparison of compliance by crime category and by offense type within the applicable cell of the sentencing matrix.²⁵ 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 2020 and 2021. Of the 6,387 sentencing guidelines worksheets submitted to the MSCCSP in fiscal year 2021, 4,663 (73%) pertained to single-count convictions.

²⁵ Of the 6,387 worksheets received in fiscal year 2021, 97 (1.5%) were reconsiderations and 5 (0.08%) were three-judge panel reviews.

Figure 26 provides the overall guidelines compliance rates for fiscal years 2020 and 2021 based on single-count convictions. The rates are similar to those in Figure 25. More than 80% of sentencing events were compliant in both fiscal years, with the compliance rate decreasing slightly from 84.9% in fiscal year 2020 to 81.4% in fiscal year 2021. When departures occurred, they were more often below the guidelines than above.

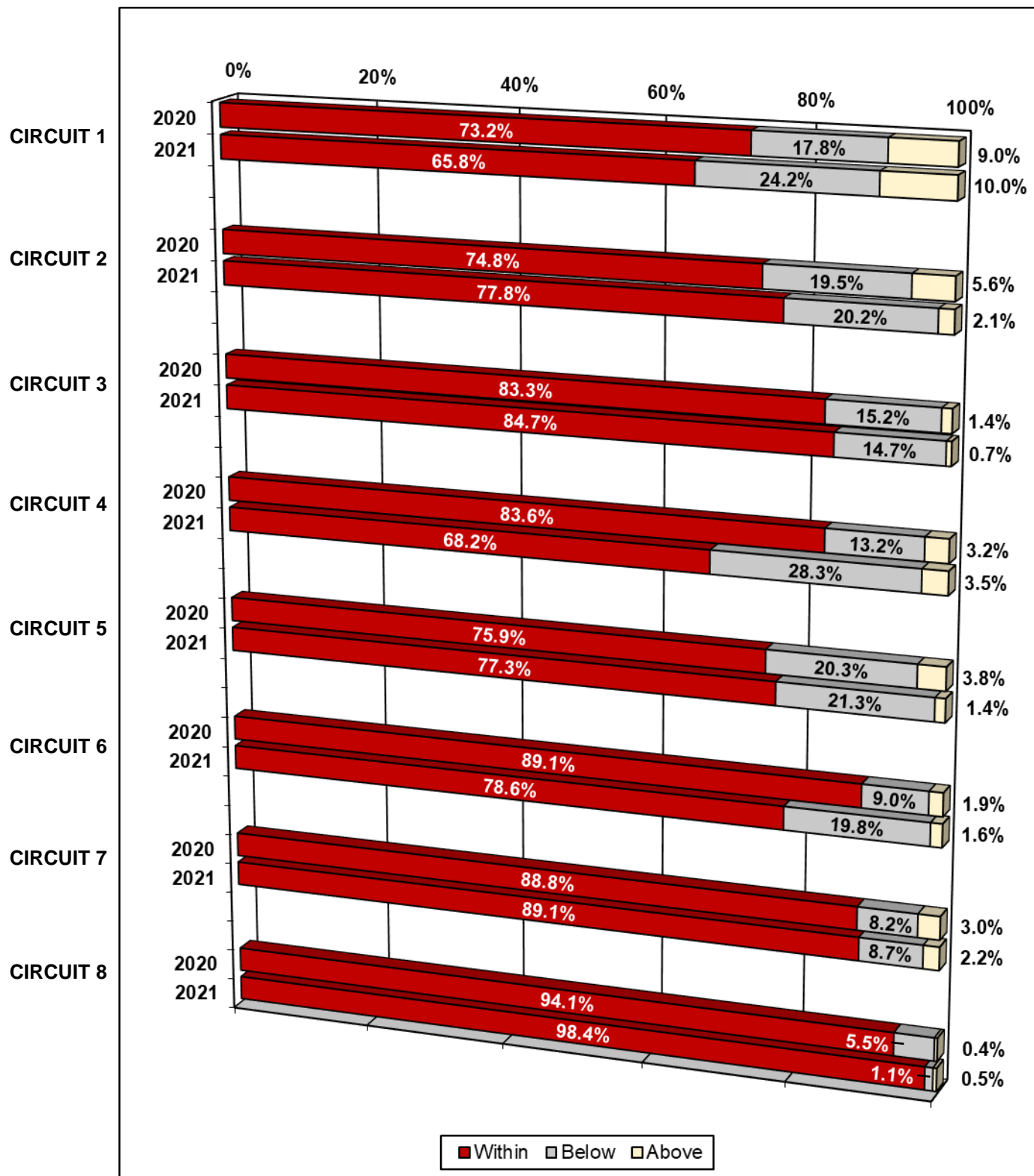
Figure 26. Overall Sentencing Guidelines Compliance by Fiscal Year (Single-Count Convictions)



Judicial Compliance Rates by Circuit

As shown in Figure 27, all eight trial court judicial circuits met the 65% compliance benchmark in fiscal year 2021. The Eighth Circuit had the highest compliance rate (98.4%). In contrast, compliance was lowest in the First Circuit (65.8%). The largest change in the compliance rate occurred in the Fourth Circuit, where the rate decreased more than 15 percentage points from 83.6% in fiscal year 2020 to 68.2% in fiscal year 2021. This decrease can largely be attributed to a reduction in the reported use of binding pleas.

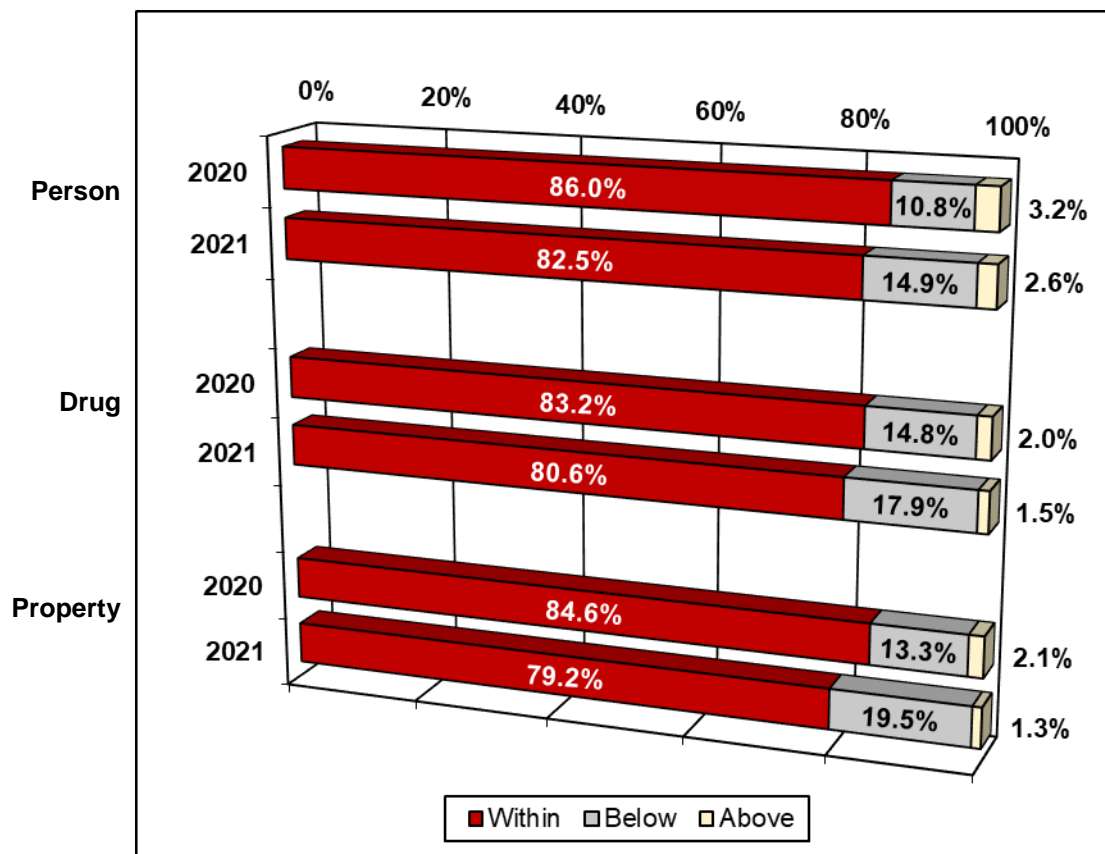
Figure 27. Sentencing Guidelines Compliance by Circuit and Fiscal Year



Judicial Compliance Rates by Crime Category

Figure 28 shows judicial compliance by crime category for fiscal years 2020 and 2021. Person offenses were the least likely to result in a departure from the guidelines in fiscal year 2021, although differences in compliance rates from one crime category to the next were small. The compliance rate decreased slightly from fiscal year 2020 to fiscal year 2021 for each of the crime categories, and the 65% benchmark was met for all three crime categories in both fiscal years.²⁶

Figure 28. Sentencing Guidelines Compliance by Crime Category and Fiscal Year



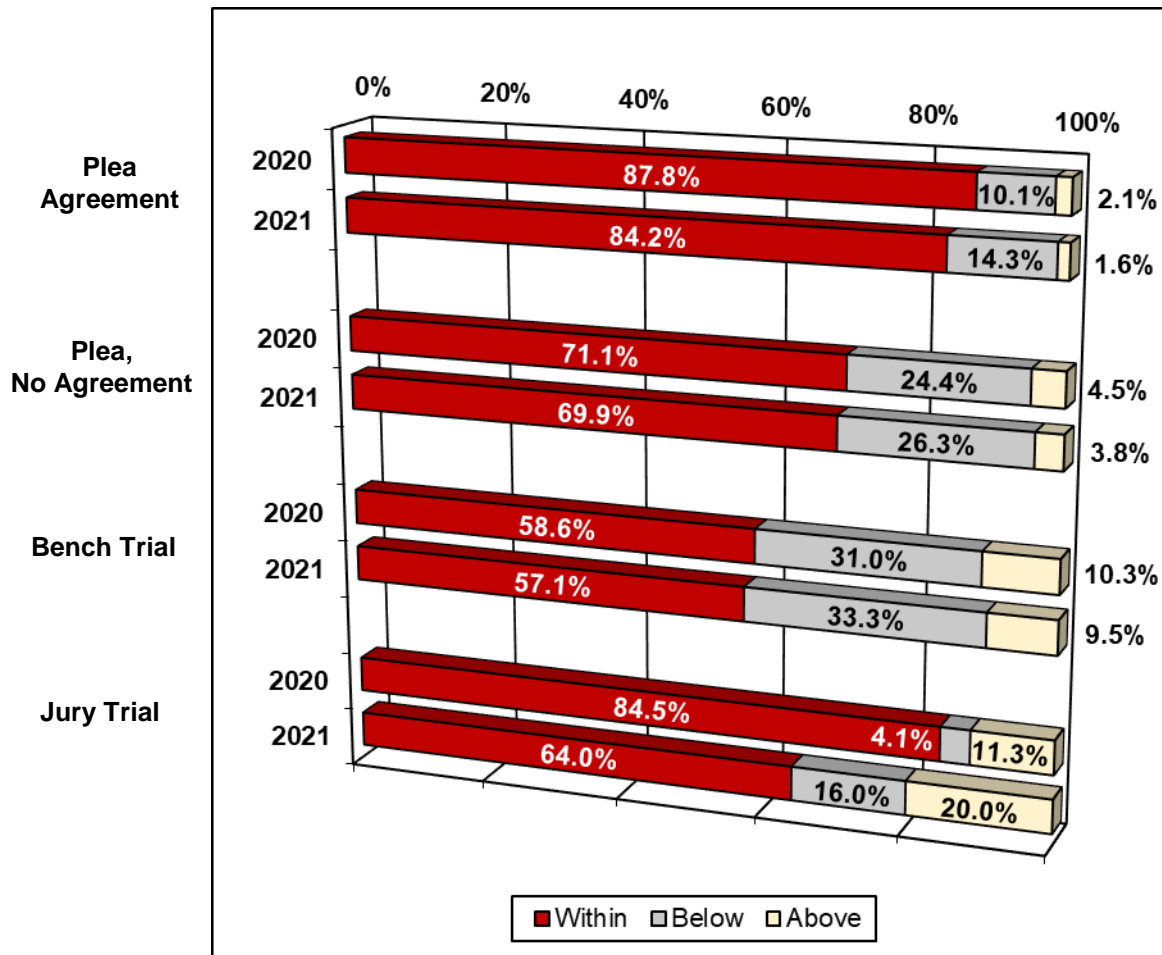
Judicial Compliance Rates by Type of Disposition

Figure 29 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 (84.2%) in fiscal year 2021. This is not surprising given that the plea agreement category includes binding plea

²⁶ See Appendix C for sentencing guidelines compliance and average sentence for the five most common offenses in each crime category among single-count sentencing events.

agreements, which are compliant by definition. In contrast, sentencing events resolved by a bench trial had the lowest compliance rate (57.1%), falling below the benchmark of 65% compliance. Sentencing events resolved by a bench trial also saw the largest percentage of downward departures (33.3%). Finally, jury trials saw the biggest change in compliance from fiscal year 2020 (84.5%) to fiscal year 2021 (64%) and were the only disposition type where upward departures occurred more often than downward departures.

Figure 29. Sentencing Guidelines Compliance by Type of Disposition and Fiscal Year



Judicial Compliance Rates by Offender Race/Ethnicity

Figure 30 displays compliance rates by offender race/ethnicity for fiscal years 2020 and 2021.²⁷ Consistent with the requirements specified in SG, § 10-603, the sentencing guidelines worksheet provides for the following defendant racial categories: American Indian or Alaska

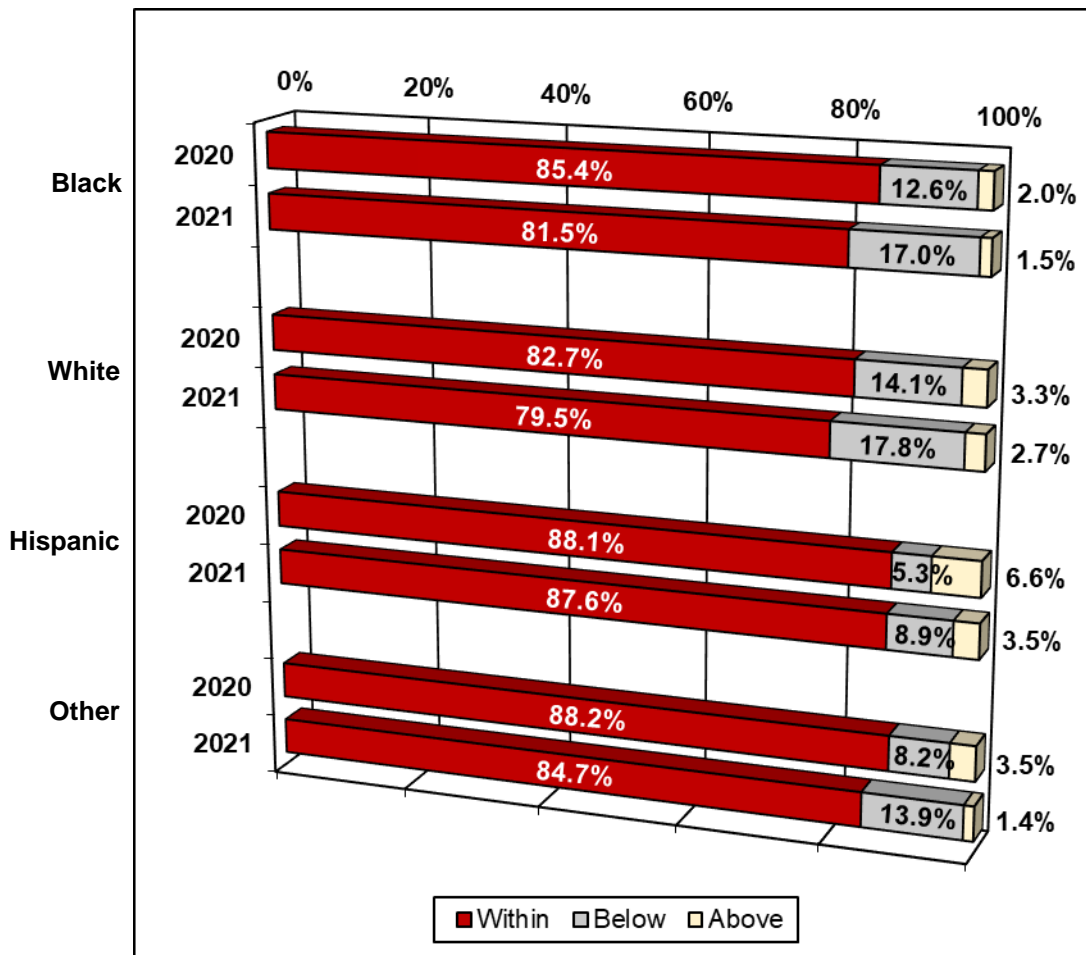
²⁷ The Judiciary’s AOC provided supplemental demographic data for worksheets missing race and/or ethnicity. With this supplemental data, the percentage of worksheets missing race and ethnicity in fiscal years 2020 and 2021 decreased to 2.7%.

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. This decision was made because the race field was often left blank when the Hispanic/Latino field was marked "yes," indicating that some respondents may not distinguish between race and ethnicity.

Figure 30 indicates that compliance rates in both fiscal years and across race/ethnicity categories well exceeded the 65% benchmark. In fiscal year 2021, guidelines compliance ranged from a low of 79.5% for White defendants to a high of 87.6% for Hispanic defendants. When departures occurred, below departures were more common than above departures across all race/ethnicity categories.

Figure 30. Sentencing Guidelines Compliance by Offender Race/Ethnicity, Fiscal Year 2021

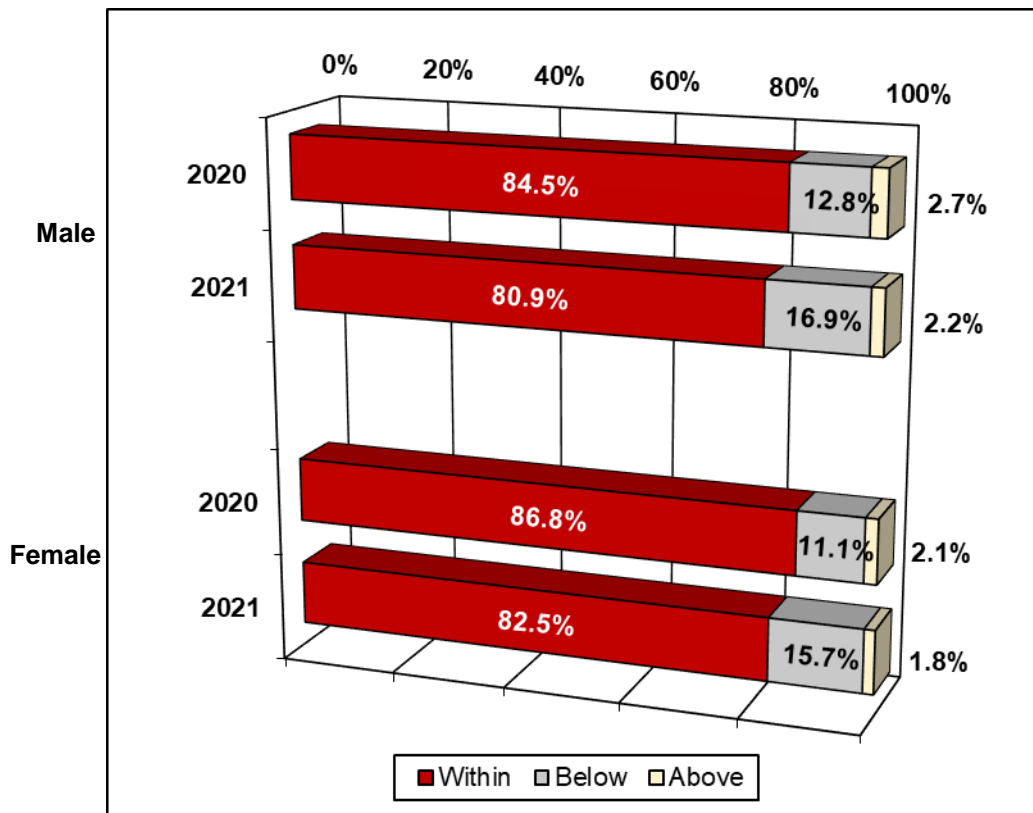


Judicial Compliance Rates by Offender Gender

Figure 31 displays compliance rates by offender gender for fiscal years 2020 and 2021.²⁸ Compliance rates were remarkably similar between male and female defendants, exceeding 80% for both groups in both fiscal years. As with compliance rates by race/ethnicity, when departures occurred, below departures were more common than above departures.

²⁸ The Judiciary’s Administrative Office of the Courts (AOC) provided supplemental demographic data for worksheets missing gender. With this supplemental data, the percentage of worksheets missing gender in fiscal years 2020 and 2021 decreased to 2.9%.

Figure 31. Sentencing Guidelines Compliance by Offender Gender, Fiscal Year 2021



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. Additionally, MAGS ensures 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 13 and 14 display the reasons given for departures from the guidelines in fiscal year 2021. The tables include the reasons listed on the reference card as well as the majority of the “other” cited reasons. Table 13 provides a rank order of the mitigating reasons judges provided for sentencing events where the sentence resulted in a downward departure. 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. Not surprisingly, the COVID-19 pandemic was among the top five reasons for a downward departure in fiscal year 2021.

Table 13. Departure Reasons for Sentencing Events Below the Guidelines, Fiscal Year 2021²⁹

Mitigating Reasons	Percent of Departures Where Reason is Cited
The parties reached a plea agreement that called for a reduced sentence	50.2%
Recommendation of State’s Attorney or Division of Parole and Probation	38.1%
Offender’s commitment to substance abuse treatment or other therapeutic program	9.9%
Offender made restorative efforts after the offense	5.0%
COVID-19 pandemic	3.4%
Offender’s age/health	3.4%
Offender had diminished capability for judgment	3.4%
Offender’s minor role in the offense	2.9%
Nature/circumstances of the offense	1.8%
Offender’s prior criminal record not significant	1.6%
Victim’s participation in the offense lessens the offender’s culpability	1.3%
Judicial discretion	1.1%
Offender serving or facing sentence in another case	0.9%
Allow offender to maintain employment/provide for dependents	0.8%
Offender waived credit for time served	0.5%

²⁹ Each sentencing event may cite multiple reasons.

Mitigating Reasons	Percent of Departures Where Reason is Cited
Victim requested a more lenient sentence or victim unavailable or not willing to cooperate	0.4%
Interest of justice	0.4%
Offender was influenced by coercion or duress	0.4%
Offender expressed remorse	0.3%
Offender's military service	0.3%
Offender moved or facing deportation	0.1%
Other reason (not specified above)	2.1%

Table 14 provides a rank order of the aggravating reasons judges provided for sentencing events where the sentence resulted in an upward departure. The most commonly cited reasons for departures above the guidelines were: 1) recommendation of the State's Attorney or Division of Parole and Probation; 2) the vicious or heinous nature of the conduct; and 3) the level of harm was excessive.

**Table 14. Departure Reasons for Sentencing Events Above the Guidelines,
Fiscal Year 2021³⁰**

Aggravating Reasons	Percent of Departures Where Reason is Cited
Recommendation of State's Attorney or Division of Parole and Probation	46.9%
The vicious or heinous nature of the conduct	29.2%
The level of harm was excessive	20.8%
Offender's major role in the offense	16.7%
Special circumstances of the victim	14.6%
Offender exploited a position of trust	12.5%
Interest of justice	5.2%
The parties reached a plea agreement	3.1%
Offender's prior criminal record significant	2.1%
Nature/circumstances of the offense	2.1%
Offender's significant participation in major controlled substance offense	2.1%
Offender committed a "white collar" offense	1.0%
Other reason (not specified above)	2.1%

³⁰ Each sentencing event may cite multiple reasons.

PLANNED ACTIVITIES FOR 2022

The work of the MSCCSP in 2022 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. Additionally, the MSCCSP will review all criminal offenses and changes in the criminal code resulting from the 2022 Legislative Session and adopt seriousness categories for these offenses. Furthermore, the MSCCSP will implement the pending amendments to the sentencing matrices for drug and property 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 2022:

- Assess sentencing guidelines offender and offense score components differences by defendant race, ethnicity, and gender.
- 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 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.
- Work with programmers at the DPSCS to release an updated, mobile-friendly version of MAGS and to simplify the sentence screen to make it easier to data-enter sentencing information.

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 2022 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								
<i>Offender Score</i>								
<i>Offense Score</i>	0	1	2	3	4	5	6	7 or more
1	P	P	P-3M	3M-1Y	3M-18M	3M-2Y	6M-2Y	1Y-3Y
2	P-6M	P-1Y	P-18M	3M-2Y	6M-3Y	1Y-5Y	18M-5Y	3Y-8Y
3	P-2Y	P-2Y	6M-3Y	1Y-5Y	2Y-5Y	3Y-7Y	4Y-8Y	5Y-10Y
4	P-3Y	6M-4Y	1Y-5Y	2Y-5Y	3Y-7Y	4Y-8Y	5Y-10Y	5Y-12Y
5	3M-4Y	6M-5Y	1Y-6Y	2Y-7Y	3Y-8Y	4Y-10Y	6Y-12Y	8Y-15Y
6	1Y-6Y	2Y-7Y	3Y-8Y	4Y-9Y	5Y-10Y	7Y-12Y	8Y-13Y	10Y-20Y
7	3Y-8Y	4Y-9Y	5Y-10Y	6Y-12Y	7Y-13Y	9Y-14Y	10Y-15Y	12Y-20Y
8	4Y-9Y	5Y-10Y	5Y-12Y	7Y-13Y	8Y-15Y	10Y-18Y	12Y-20Y	15Y-25Y
9	5Y-10Y	7Y-13Y	8Y-15Y	10Y-15Y	12Y-18Y	15-25Y	18Y-30Y	20Y-30Y
10	10Y-18Y	10Y-21Y	12Y-25Y	15Y-25Y	15Y-30Y	18Y-30Y	20Y-35Y	20Y-L
11	12Y-20Y	15Y-25Y	18Y-25Y	20Y-30Y	20Y-30Y	25Y-35Y	25Y-40Y	25Y-L
12	15Y-25Y	18Y-25Y	18Y-30Y	20Y-35Y	20Y-35Y	25Y-40Y	25Y-L	25Y-L
13	20Y-30Y	25Y-35Y	25Y-40Y	25Y-L	25Y-L	30Y-L	L	L
14	20Y-L	25Y-L	28Y-L	30Y-L	L	L	L	L
15	25Y-L	30Y-L	35Y-L	L	L	L	L	L

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

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

P=Probation, M=Months, Y=Years

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

P=Probation, M=Months, Y=Years

Appendix B:

Maryland Sentencing Guidelines Worksheet (version MAGS 10.0)

MARYLAND SENTENCING GUIDELINES WORKSHEET		OFFENDER NAME - Last, First, Middle		SID #	SEX M ___ F ___	BIRTHDATE	JURISDICTION	
PSI	DATE OF OFFENSE	DATE OF SENTENCING	DISPOSITION TYPE	RECONSIDERATION OR 3-JUDGE PANEL REVIEW	REPRESENTATION	ETHNICITY	RACE (Select all that apply)	
Yes ___ No ___ AT THIS SENTENCING NUMBER OF:	CONVICTED OFFENSES CRIMINAL EVENTS WORKSHEET # _____ OF _____ CRIMINAL EVENT # _____	MSCCSP binding plea agreement ___ Other plea agreement ___ plea, no agreement ___ Court trial ___ Jury trial ___	Reconsideration ___ (COV's only) 3-Judge Panel Review ___ Neither ___	Private ___ Public defender ___ Court appointed ___ Self ___	Hispanic/Latino origin ___ Yes ___ No ___ Unknown ___ Victim Court Costs Imposed ___ Yes ___ No ___	American Indian ___ or Alaska Native ___ Black or African American ___ White ___ Other ___ Unknown ___	American Indian ___ or Alaska Native ___ Black or African American ___ Native Hawaiian or other Pacific Islander ___ White ___ Other ___ Unknown ___	
CONVICTED OFFENSE TITLE			I-VII	CJIS CODE	MD CODE, ART. & SECTION	STAT. MAX	MIN TERM	CASE #
1st Convicted Offense								
2nd Convicted Offense								
3rd Convicted Offense								
OFFENSE SCORE(S) - Offense Against a Person Only			OFFENDER SCORE	GUIDELINES RANGE	ACTUAL SENTENCE - Imposed, Suspended, Time Served, Probation, Restitution, Fine, Corrections Options Program (Drug Court, Home Detention, Etc.)			
1st Off <u> </u> 2nd Off <u> </u> 3rd Off <u> </u> A. Seriousness Category 1 = I = V - VII 3 = 3 = IV 5 = 5 = III 8 = 8 = II 10 = 10 = I			A. Relationship to CJIS When Instant Offense Occurred 0 = None or pending cases 1 = Court or other criminal justice supervision B. Juvenile Delinquency 0 = 23 years or older or 0 findings of a delinquent act within 5 years of the date of the most recent offense 1 = Under 23 years and: 1 or 2 findings of delinquent act within 5 years of the date of the most recent instant offense 2 = Under 23 years and: 3 or more findings of a delinquent act within 5 years of the date of the most recent instant offense C. Prior Adult Criminal Record 0 = None 1 = Minor 3 = Moderate 5 = Major D. Prior Adult Parole/Prob Violation 0 = No 1 = Yes	1st Con. Off. <u> </u> TO <u> </u> 2nd Con. Off. <u> </u> TO <u> </u> 3rd Con. Off. <u> </u> TO <u> </u>	For theft, fraud, and related crimes, please indicate: <input type="checkbox"/> Economic Loss \$ _____ <input type="checkbox"/> Restitution Proven: Yes ___ No ___ Subsequent Offender Proven: Yes ___ No ___ Restitution Proven: Yes ___ No ___ For theft, fraud, and related crimes, please indicate: <input type="checkbox"/> Economic Loss \$ _____ <input type="checkbox"/> Restitution Proven: Yes ___ No ___ Subsequent Offender Proven: Yes ___ No ___ Restitution Proven: Yes ___ No ___ For theft, fraud, and related crimes, please indicate: <input type="checkbox"/> Economic Loss \$ _____ <input type="checkbox"/> Restitution Proven: Yes ___ No ___ Subsequent Offender Proven: Yes ___ No ___ Restitution Proven: Yes ___ No ___ Additional Sentence Information Probation Community Service Fine \$ _____ Was the offender sentenced to a Corrections Option under Commission criteria? If yes, select all that apply: <input type="checkbox"/> Drug court <input type="checkbox"/> HG, § 6-507 order <input type="checkbox"/> Home detention <input type="checkbox"/> Yes ___ No ___ <input type="checkbox"/> Suspended sentence per CR. § 5-601(e) <input type="checkbox"/> Inpatient substance abuse treatment <input type="checkbox"/> Work release <input type="checkbox"/> Inpatient mental health treatment <input type="checkbox"/> Weekend (for other discontinuous) incarceration <input type="checkbox"/> Other problem solving court (specify): _____			
1st Off <u> </u> 2nd Off <u> </u> 3rd Off <u> </u> B. Victim Injury 0 = No injury 1 = Injury, non-permanent 2 = Permanent injury or death C. Weapon Presence 0 = No weapon 1 = Weapon other than firearm 2 = Firearm or explosive D. Special Victim Vulnerability 0 = No 1 = Yes			Overall Offense Score(s) _____ OFFENSE SCORE(S)	Overall Guidelines Range Multiple Counts Only _____ TO _____ 50% of Sentence Announced for COV's Yes ___ No ___	Was the offender sentenced to some other alternative to incarceration? If yes, select all that apply: <input type="checkbox"/> Outpatient substance abuse treatment <input type="checkbox"/> Yes ___ No ___ <input type="checkbox"/> Outpatient mental health treatment <input type="checkbox"/> Other (explain): _____ Additional Information or Institutional/Parole Recommendation Worksheet Completed By _____ Title _____ Sentencing Judge (Please Print) _____ Parole Notification Yes ___ No ___ Sentencing Judge's Signature _____			
Victim participation Yes ___ No ___ Victim notification form Yes ___ No ___ Victim notified plea Yes ___ No ___ Victim notified date Yes ___ No ___ Victim present Yes ___ No ___ Written VIS Yes ___ No ___ Oral VIS Yes ___ No ___ No contact requested Yes ___ No ___ No contact ordered Yes ___ No ___			REASONS FOR GUIDELINES DEPARTURE _____ Departure Code 9 or 18 (Please Explain): _____	DEPARTURE Yes ___ No ___ No contact requested Yes ___ No ___ No contact ordered Yes ___ No ___				

Appendix C:

Sentencing Guidelines Compliance and Average Sentence by Offense Type, Single Count Cases, Fiscal Year 2021 (Most Common Person, Drug, and Property Offenses)

Person Offenses	N	Guidelines Compliance			% Incarc ³¹	Average Sentence Among Incarcerated	
		Within	Below	Above		Total Sentence	Total, Less Suspended
Assault, 2 nd Degree	797	85.8%	10.9%	3.3%	67.6%	5.9 years	1.1 years
Robbery	243	82.7%	16.5%	0.8%	84.4%	9.2 years	2.4 years
Assault, 1 st Degree	154	66.9%	31.2%	1.9%	94.2%	14.2 years	4.4 years
Possession of Regulated Firearm by Restricted Person	148	77%	22.3%	0.7%	73.6%	4.3 years	1.1 years
Wear, Carry, or Transport Handgun	121	93.4%	6.6%	---	58.7%	2.5 years	0.4 years
Drug Offenses							
Distribute, PWID, Manufacture, etc. Cocaine	320	67.2%	31.6%	1.3%	72.5%	9.4 years	2.5 years
Distribute, PWID, Manufacture, etc. Marijuana	274	86.1%	13.5%	0.4%	38.3%	3.2 years	0.4 years
Possess Marijuana	139	97.1%	1.4%	1.4%	17.3%	0.4 years	0.2 years
Distribute, PWID, Manufacture, etc. Fentanyl	99	80.8%	18.2%	1%	82.8%	9.3 years	1.8 years
Possess Cocaine	84	91.7%	6%	2.4%	50%	0.8 years	0.2 years
Property Offenses							
Burglary, 2 nd Degree	110	78.2%	21.8%	---	68.2%	7.5 years	1.8 years
Burglary, 1 st Degree	104	77.9%	20.2%	1.9%	71.2%	9.7 years	3 years
Felony Theft or Theft Scheme, At Least \$1,500 but Less Than \$25,000	87	78.2%	18.4%	3.4%	48.3%	4.2 years	1.2 years
Burglary, 4 th Degree	83	79.5%	20.5%	---	51.8%	1.9 years	0.5 years
Misdemeanor Theft or Theft Scheme, At Least \$100 but Less Than \$1,500	49	83.7%	16.3%	---	61.2%	0.4 years	0.2 years

³¹ % *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
MSCCSP Binding Plea Agreement ³²	A plea agreement presented to the court in agreement by an attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, that a court has approved relating to a particular sentence and disposition. An MSCCSP binding plea agreement means an agreement to a specific amount of active time (if any), not merely a sentence cap or range. The court has the discretion to accept or reject the plea. The agreement is binding on the court under Maryland Rule 4-243(c) if the court accepts the plea.
Other Plea Agreement	The disposition resulted from a plea agreement reached by the parties that did not include an agreement to a specific amount of active time (if any) and/or the agreement 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.

³² The name and definition of a guidelines-compliant plea agreement was revised effective April 1, 2021. Prior to April 1, 2021, a guidelines-compliant plea was termed an *ABA plea agreement* and defined as follows: *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).* In this report, “binding plea agreement” encompasses *ABA plea agreements* prior to April 1, 2021, and *MSCCSP binding plea agreements* on or after 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