

# SENTENCING GUIDELINES - MARYLAND AND NATIONWIDE



DEPARTMENT OF LEGISLATIVE SERVICES 2014

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# **Sentencing Guidelines – Maryland and Nationwide**

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DEPARTMENT OF LEGISLATIVE SERVICES  
OFFICE OF POLICY ANALYSIS  
MARYLAND GENERAL ASSEMBLY

Warren G. Deschenaux  
Director

October 17, 2014

The Honorable Thomas V. Mike Miller, Jr., President of the Senate  
The Honorable Michael E. Busch, Speaker of the House of Delegates  
Members of the Maryland General Assembly

Ladies and Gentlemen:

This report, *Sentencing Guidelines – Maryland and Nationwide*, was prepared in an effort to provide a better understanding of the Maryland State Commission on Criminal Sentencing and its purpose. The report provides information regarding compliance with the Maryland sentencing guidelines and discusses sentencing commissions in others states and the federal government.

The report was written by Guy G. Cherry and Jordan D. More with editorial direction from Claire E. Rossmark. Shirleen M. Pilgrim reviewed the final report.

I trust that this information will be of assistance to you.

Sincerely,

Warren G. Deschenaux  
Director

WGD/SMP/kmb



# Contents

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Letter of Transmittal .....	iii
Introduction.....	1
Overview of the Maryland State Commission on Criminal Sentencing Policy.....	1
Sentencing Compliance .....	4
Rate of Return on Worksheets .....	8
Sentencing Commissions – A National Perspective.....	9
Alabama .....	12
Alaska .....	13
Arkansas.....	13
Delaware .....	14
District of Columbia .....	14
Kansas .....	14
Louisiana.....	15
Massachusetts .....	15
Michigan .....	16
Minnesota.....	16
Missouri .....	17
North Carolina .....	17
Ohio.....	18
Oregon.....	18
Pennsylvania .....	18
Tennessee.....	19
Utah.....	19
Virginia .....	20
Washington .....	20
Wisconsin.....	21
Conclusion .....	21



# Sentencing Guidelines – Maryland and Nationwide

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## Introduction

This paper includes an overview of the Maryland State Commission on Criminal Sentencing Policy, provides statistics regarding compliance with the Maryland sentencing guidelines and rate of return of sentencing guidelines worksheets, and discusses sentencing commissions of other states and the federal government.

## Overview of the Maryland State Commission on Criminal Sentencing Policy

According to the 2013 Annual Report of the Maryland State Commission on Criminal Sentencing Policy, the Judicial Committee on Sentencing was formed in May 1978 by the Court of Appeals and recommended a system of voluntary, descriptive sentencing guidelines for use in circuit courts. In 1979, Maryland received a grant from the National Institute of Justice to participate in a multijurisdictional field test of sentencing guidelines. The sentencing guidelines were developed on the basis of extensive collection and analysis of data on past sentencing practices in Maryland and were designed to account for both offender and offense characteristics in determining the appropriate sentence range. Beginning in June 1981, the sentencing guidelines were piloted in four jurisdictions selected to represent a diverse mix of areas. After two years of operation of the pilot, the guidelines were formally adopted statewide on July 1, 1983, following approval by the Maryland General Assembly and a favorable vote by the Judicial Conference.

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) was created by legislation in 1999 to oversee sentencing policy and to monitor the State's voluntary sentencing guidelines. It replaced a predecessor study and advisory commission created by the General Assembly in 1996. The governing statutes are § 6-201 *et seq.* of the Criminal Procedure Article. MSCCSP is a State agency within the Executive Branch. The General Assembly established six objectives to guide the work of the commission, including: (a) the reduction of unwarranted sentencing disparity; (b) the prioritization of prison usage for violent and career offenders; (c) the preservation of meaningful judicial discretion; and (d) the imposition of the most appropriate criminal penalties. The commission consists of 19 members, including members of the Judiciary, members who are active in the criminal justice system, members of the Maryland Senate and House of Delegates, and representatives of the public. The commission employs a staff of five, including an executive director, research director, administrative/training coordinator, program analyst, and policy analyst. The commission is also periodically assisted by various student interns.

The primary responsibilities of 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 adopts changes to the guidelines when necessary.



Pursuant to § 6-216 of the Criminal Procedure Article, the circuit courts are required to consider the sentencing guidelines in deciding the proper sentence. The sentencing guidelines cover three categories of offenses: person, drug, and property. The guidelines recommend whether an individual should be incarcerated and, if so, provide a recommended sentence length range. For each offense category, there is a separate grid or matrix in which each cell contains a recommended sentence range. **Exhibit 1** includes a copy of the three sentencing matrices. The sentence recommendation is determined in the grid by the cell that is the intersection of an individual's offense score and offender score. For drug and property offenses, the offense score is determined by the seriousness of the offense ("seriousness category"). For offenses against persons, the offense score is determined by the seriousness category, the physical or mental injury to the victim, the presence of a weapon, and any special vulnerability of the victim, such as being under 11 years old, 65 or older, or physically or mentally disabled. The offender score is a measure of the individual's criminal history and is determined by whether or not the offender was in the criminal justice system at the time the offense was committed (*i.e.*, on parole, probation, or temporary release from incarceration, such as work release), has a juvenile record or prior criminal record as an adult, and has any prior adult parole or probation violations.

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**Exhibit 1**  
**Sentencing Guidelines Matrices**

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

**Exhibit 1 (continued)**

<b>Sentencing Matrix for Drug Offenses</b> (Revised 10/2001)								
<b>Offender Score</b>								
<b>Offense Seriousness Category</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7 or more</b>
<b>VII</b>	P	P	P	P-1M	P-3M	P-6M	3M-6M	6M-2Y
<b>VI</b>	Available for future use. There are currently no seriousness category VI drug offenses.							
<b>V</b>	P-6M	P-12M	3M-12M	6M-18M	1Y-2Y	1.5Y-2.5Y	2Y-3Y	3Y-4Y
<b>IV</b>	P-12M	P-18M	6M-18M	1Y-2Y	1.5Y-2.5Y	2Y-3Y	3Y-4Y	3.5Y-10Y
<b>III-A</b> 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
<b>III-B</b> Non-marijuana and non-MDMA, Except Import	6M-3Y	1Y-3Y	18M-4Y	3Y-7Y	4Y-8Y	5Y-10Y	7Y-14Y	12Y-20Y
<b>III-C</b> Non-marijuana and non-MDMA, Import	1Y-4Y	2Y-5Y	3Y-6Y	4Y-7Y	5Y-8Y	6Y-10Y	8Y-15Y	15Y-25Y
<b>II</b>	20Y-24Y	22Y-26Y	24Y-28Y	26Y-30Y	28Y-32Y	30Y-36Y	32Y-37Y	35Y-40Y

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

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

The guidelines sentence range represents only nonsuspended time. The sentencing guidelines are advisory and judges may, at their discretion, impose a sentence outside the guidelines. If a judge chooses to depart from the sentencing guidelines, the Code of Maryland Regulations (COMAR) 14.22.01.05.A mandates that the judge document the reason or reasons for imposing a sentence outside of the recommended guidelines range. In 1991, the precursor to the commission set an expectation that two-thirds of sentences would fall within the recommended sentencing range. Since that time, the commission has adopted the goal of 65% as the benchmark standard for compliance.

The Maryland sentencing guidelines worksheet enables MSCCSP to collect criminal sentencing data from State and local agencies involved in criminal sentencing in order to carry out its statutory duties to monitor sentencing practice and adopt changes to the sentencing guidelines matrices when necessary. Worksheets are required to be completed by criminal justice practitioners for all guidelines-eligible criminal cases prosecuted in circuit court to determine the recommended sentencing outcome and to record sentencing data. A copy of the Maryland sentencing guidelines worksheet is provided in **Exhibit 2**. After a worksheet is completed, the sentencing judge is expected to review the worksheet for completeness and accuracy (COMAR 14.22.01.03 F(4)), and a hard copy is mailed to the commission's office. The commission staff is responsible for data entry and monitoring of all data collected within the guidelines worksheets. Data collected by the commission permit analysis of sentencing trends with respect to compliance with the guidelines, particular offenses, specific types of offenders, and geographic variations.

## **Sentencing Compliance**

A compliant sentence, as determined by MSCCSP, includes those sentences:

- where the initial sentence (defined as the sum of incarceration, credited time, and home detention) falls within the applicable guidelines range;
- where the sentence is the result of an American Bar Association (ABA) plea agreement;
- where the defendant is placed into a corrections options program (including drug court, Health General Article 8-507 commitment, home detention, etc.) provided that the initial sentence plus any suspended sentence falls within or above the applicable guidelines range and the case does not include a crime of violence, child sexual abuse, or escape; or
- where the judge sentenced an offender to a period of pre-sentence incarceration time with no additional post-sentence incarceration time and the length of the credited pre-sentence incarceration exceeds the upper guidelines range for the case.

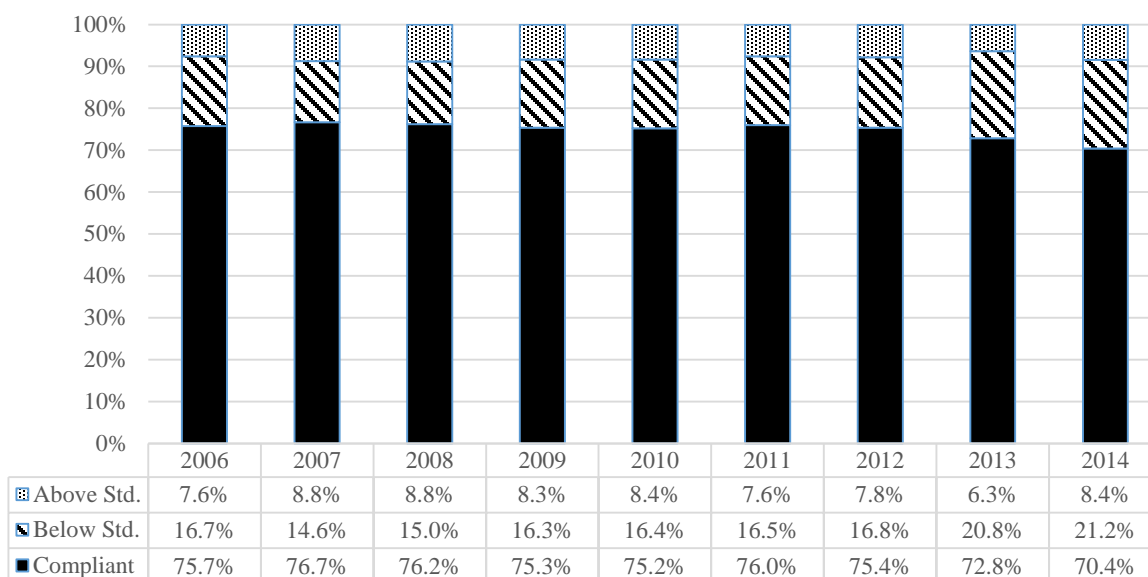
## Exhibit 2

### Maryland Sentencing Guidelines Worksheet

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

**Exhibit 3** shows the compliance rate statewide as well as the number of sentences given below the guidelines and above them from fiscal 2006 through 2014 (fiscal 2006 only includes data from the second half of the fiscal year). Across this time period, the rate of compliance, as well as the rate of sentences both below and above the guidelines, has been fairly consistent. Compliance has ranged from a high of 76.7% to a low of 70.4%, while the proportion of cases below the guidelines has ranged from a high of 21.2% to a low of 15.0%. Further, the variations between compliant sentences and below guidelines sentences are inversely proportional. Above guidelines sentences had the lowest numbers and ranges, from a high of 8.8% to a low of 6.3%.

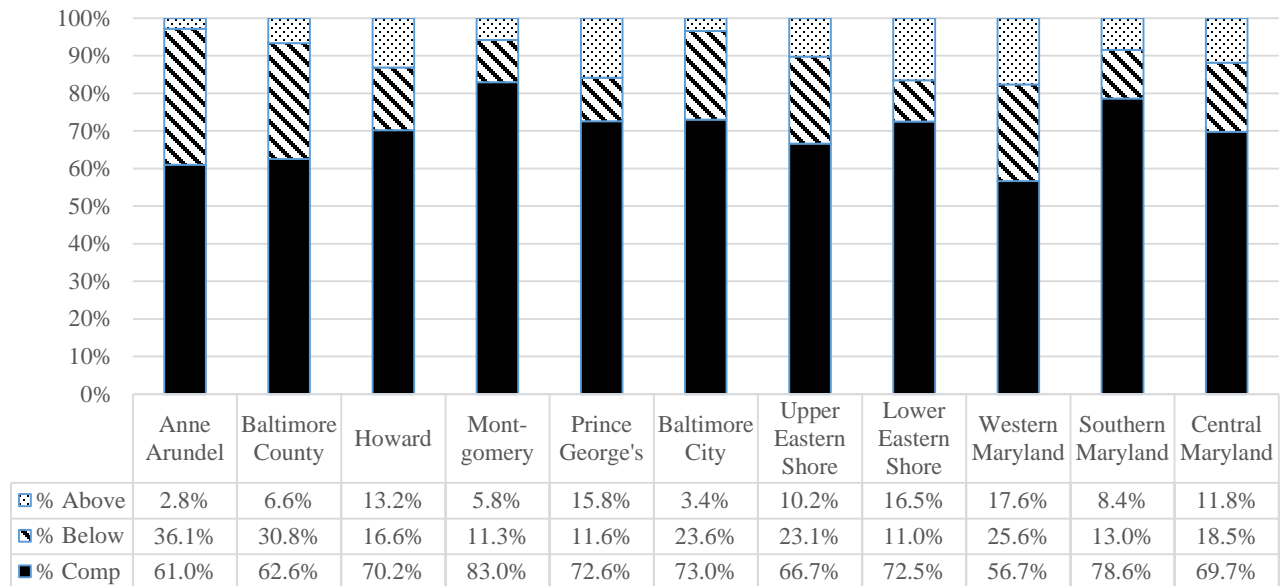
**Exhibit 3**  
**Statewide Compliance**  
**Fiscal 2006-2014**



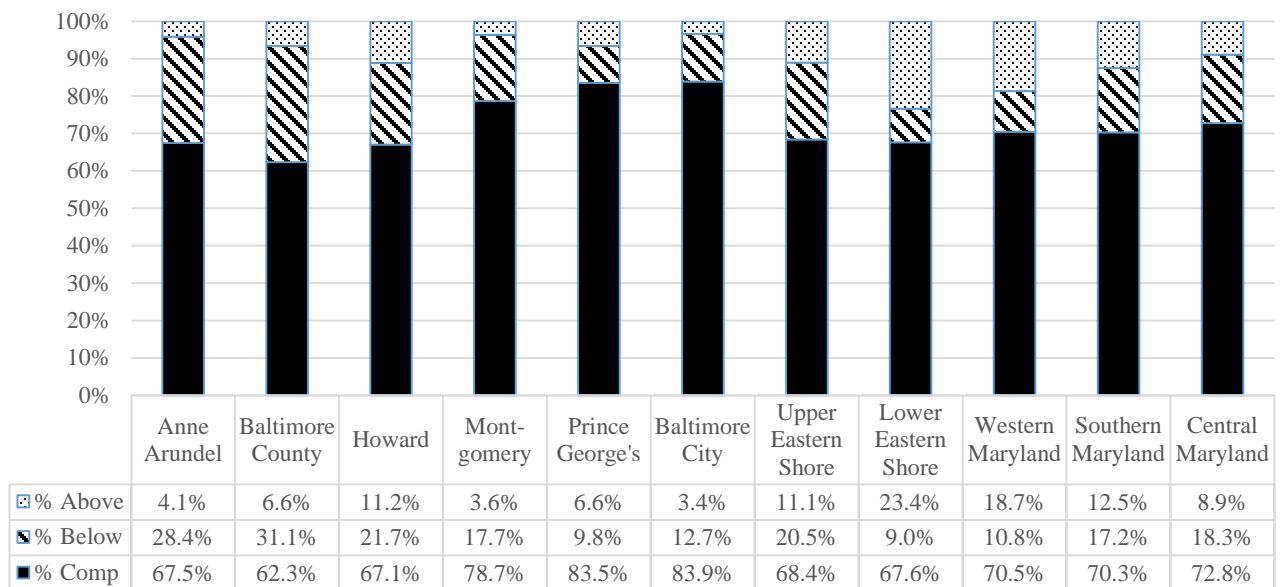
Source: Maryland State Commission on Criminal Sentencing Policy

While statewide the trend changes have been minimal, once broken down into regions there is more variation as to the rate of compliance. **Exhibit 4** provides a comparison between the second half of fiscal 2006 to 2014 of the compliance rates for sentences by region. Similar to the statewide charts, most counties and regions did not change drastically during the time period available. In fact, all regions exhibited a similar trend to the statewide data where compliant cases make up the vast majority of all sentences, remaining above 61% in all regions. Further, in all regions with the exception of the Lower Eastern Shore and Western Maryland, all regions also had more below guidelines sentences than above guidelines sentences, with the amount of sentences above the guidelines never climbing above 23.4%.

### Exhibit 4 Sentencing Compliance by Region Fiscal 2014



### Fiscal 2006



Upper Eastern Shore includes Cecil, Kent, Queen Anne's, Talbot, and Caroline counties

Lower Eastern Shore includes Worcester, Wicomico, Dorchester, and Somerset counties

Western Maryland includes Garrett, Allegany, and Washington counties

Southern Maryland includes Charles, Calvert, and St. Mary's counties

Central Maryland includes Frederick, Carroll, and Harford counties

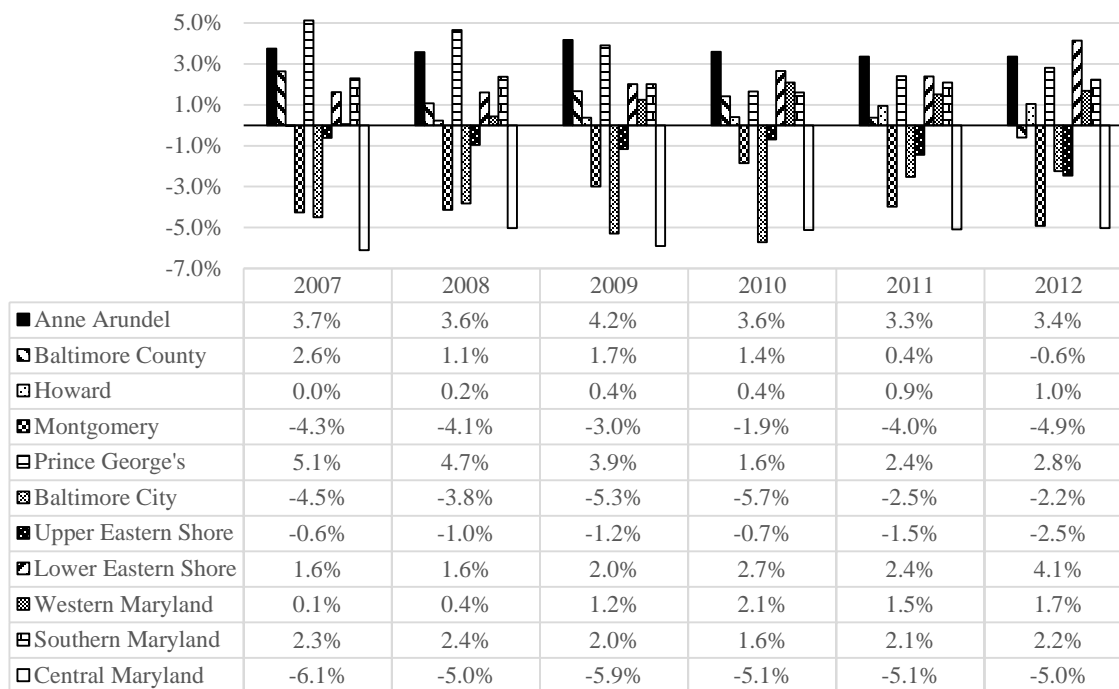
Source: Maryland State Commission on Criminal Sentencing Policy

## Rate of Return on Worksheets

At the present time, MSCCSP does not have a verifiable way of determining if all of the required worksheets that are supposed to be filled out are actually being filled out. However, MSCCSP staff have informed the Department of Legislative Services that they are currently working with the Judiciary to develop a program that will alert circuit court judges each time they decide a case that will require a worksheet.

While it cannot be conclusively determined how many worksheets are not being filled out, it is possible to determine which jurisdictions are filling out worksheets at a greater rate than others. Based on the theory that the proportion of guilty convictions from a certain area should be roughly equal to the proportion of worksheets derived from that area, **Exhibit 5** provides a comparison between the differences between those proportions. A negative number would indicate that the particular jurisdiction is not completing worksheets at the same rate as the statewide average, while a positive number would indicate the opposite. Of note, three regions had large negative ratios between their guilty counts and the number of sentencing worksheets turned in. Montgomery County, Baltimore City, and Central Maryland all had large negative ratios ranging between -6.1% and -1.9%, and further never had a positive year. In contrast, Anne Arundel and Prince George's counties have consistently had the highest positive ratios of any region.

**Exhibit 5**  
**Difference between Guilty Convictions and Sentencing Worksheets**  
**Fiscal 2007-2012**



## Sentencing Commissions – A National Perspective

The U.S. Sentencing Commission is an independent agency of the Judicial Branch of the federal government. The commission was created by the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984 and is responsible for articulating the sentencing guidelines for the federal courts and production of the Federal Sentencing Guidelines, which replaced the prior system of indeterminate sentencing that allowed trial judges to give sentences ranging from probation to the maximum statutory punishment for the offense.<sup>1</sup>

The current number of active state sentencing commissions is difficult to pin down. According to the 2012 Annual Report of the Connecticut Sentencing Commission, there are 28 active commissions (see **Exhibit 6**), including the Connecticut commission, which published its first annual report in 2011. The National Association of Sentencing Commissions (NASC), however, currently lists only 22 sentencing commissions/councils with websites on its website: <http://thenasc.org/home.html>.

The most recent survey and report on state commissions was done by the National Center for State Courts (NCSC) in 2008. That report said that “there might not be universal agreement on which states have active sentencing guidelines” and reported on 21 sentencing guidelines systems in the following jurisdictions: Alabama, Alaska, Arkansas, Delaware, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, Wisconsin, and the District of Columbia. The NCSC report goes on to say that even the most active state sentencing commissions “are not fully aware of how they compare to their counterparts in other states.”

The 2012 Connecticut annual report provides the most recent historical perspective on sentencing commissions:

[T]he earliest sentencing commissions, established in the late 1970s, were charged primarily with promulgating sentencing guidelines ... while commissions became more widespread in the late 1980s and 1990s, the impetus for their creation shifted. These shifts were mainly due to the enactment of the Federal Crime Bill of 1994, also known as the Violent Crime Control and Law Enforcement Act, and the allocation of federal VOI/TIS money (Violent Offender Incarceration and Truth-in-Sentencing). Moreover, states were moving from indeterminate to determinate sentencing in an effort to implement truth-in-sentencing policies. As a result, these commissions were dealing with prison overcrowding crises caused by “get tough” sentencing policies of previous years and the shift to truth-in-sentencing.

Most recently, states have been creating commissions to examine criminal sentencing policies in broader terms. These commissions are not specifically focused on developing sentencing guidelines, but rather on issues of prison overcrowding, community sentencing alternatives, and reentry strategies. Of the four states that established currently active sentencing commissions in the past ten years excluding Connecticut – New Jersey, Colorado, New York, and Illinois – only New Jersey’s was primarily charged with implementing sentencing guidelines.

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<sup>1</sup> Although the federal sentencing guidelines were originally mandatory, the Supreme Court’s decision in *United States v. Booker*, 543 U.S. 220 (2005) found that the mandatory nature of the guidelines violated the Sixth Amendment right to trial by jury. The guidelines are now considered advisory only.



**Exhibit 6**  
**National Sentencing Commissions**  
**2012**

INSTITUTE FOR MUNICIPAL AND REGIONAL POLICY  
Central Connecticut State University

State	Year Created	Affiliation	Members	Staff	Budget Year	Budget	Funding Source
Alabama	2000	Judicial	21	4	2009	\$184,000	Federal Byrne Memorial Grant, Vera Institute
Alaska	1959	Judicial	10	7	2011	\$1,096,000	Legislature, Alaska Court System, D.O.C., Division of Juvenile Justice
Arkansas	1993	Independent	9	5	2011	\$390,830	Miscellaneous Agencies Fund: General Revenues
Colorado	2007	Executive	27	11	2009	\$92,657	JEHT Foundation
Delaware	1984	Executive	11				Active – information unavailable
DC	1988	Independent	22	6	2011	\$768,000	General Funds
Illinois	2009		18		2010	\$150,000 (seed)	ICJIA Grant, Justice Assistance Grant, D.O.C.
Iowa	1974	Human Rights Dept	22	16	2009	\$200,000	CJIS Project: Stimulus Funds
Kansas	1989	Executive	17	9	2012	\$8,284,734	State General Fund
Louisiana	1987	Executive	21	8		N/A	No Funding or External Financial Support
Maryland	1996	Executive	19	4	2011-2012	\$351,229	State General Fund
Massachusetts	1995	Judicial	15	4	2009	\$232,000	Federal Byrne Memorial Grant, Justice Assistance Grant Program
Michigan	1994	Legislative	19	4	2000	\$250,000	INACTIVE
Minnesota	1978	Executive	11	6	2009-2011 (Biennial)	\$1,179,000	State General Fund

Exhibit 6 (continued)

Missouri	1994	Independent	11	1	2009	\$95,000	Federal Byrne Memorial Grant
Nevada	2007	Judicial	17		2009	\$50,000	INACTIVE
New Jersey	2004	Executive	13	1	2009	\$100,000	Pew Charitable Trusts
New Mexico	2001	Executive	20	2	2010	\$754,800	IJIS Technical Assistance Grant, Local Funds
New York	2010	Executive	20	3			DCJS, Vera Institute, State General Funds
North Carolina	1990	Judicial	28	9	2009	\$900,000	
Ohio	1991	Judicial	27	1	2011	\$200,000	
Oklahoma	1997	Judicial	15		2000	\$664,000	INACTIVE
Oregon	1995	Independent	9	6	2009-2011 (Biennial)	\$2,389,346	Federal Byrne Memorial Justice Grant, Justice Assistance Grant Program
Pennsylvania	1978	Legislative	11	15	2011	\$1,397,000	Grant Funding, Appropriation, State General Funded Operation Budget
South Carolina	2008	Legislative	10				
Utah	1993	Executive	25	1	2009	\$185,000	
Virginia	1995	Judicial	17	7	2011	\$1,039,254	State General Fund, Local Funding
Washington	1981	Legislative	12	9	2009-2011 (Biennial)	\$1,900,000	
United States Sentencing Commission	1984	Independent agency in Judicial Branch	7	103.44 Work Years 19	2011	\$16,803,326	Public Law 111-117 Federal Funding

CJIS: Criminal Justice Information Service

DCJS: Department of Criminal Justice Services

ICJIA: Illinois Criminal Justice Information Authority

IJS: Integrated Justice Information Systems

JEHT: Justice, Equality, Human dignity, and Tolerance

While **Exhibit 6** tabulates summary information on 28 state-level sentencing commissions, as well as the U.S. Sentencing Commission, the 2008 survey by NCSC of the 21 jurisdictions cited above introduced six criteria as a means to compare and contrast the various state guideline systems. The criteria questions were the following:

1. Is there an enforceable rule related to guideline use?
2. Is the completion of a worksheet or structured scoring form required?
3. Does a sentencing commission regularly report on guideline compliance?
4. Are compelling and substantial reasons required for departures?
5. Are written reasons required for departures?
6. Is there appellate review of defendant-based challenges related to sentencing guidelines?

The following responses to those questions were published in the 2008 report. The full profile of each jurisdiction can be found online at [http://www.ncsc.org/~media/microsites/files/csi/state\\_sentencing\\_guidelines.ashx](http://www.ncsc.org/~media/microsites/files/csi/state_sentencing_guidelines.ashx).

### **Alabama**

- The Sentencing Commission describes its sentencing standards as voluntary.
- The judge determines who completes worksheets; they may be completed by the district attorney, defense attorney, probation officer, court referral officer, and/or community corrections personnel.
- Alabama has not yet commissioned any guideline compliance studies.
- Judges can depart from the standard range on the basis of the facts presented in each individual case.
- If an imposed sentence is outside the standard range, the judge is requested to write a brief explanation as to why the standards are not followed.
- Sentences imposed according to the guideline standards are not subject to appellate review.

## **Alaska**

The Alaska Sentencing Commission was a guidelines study and evaluation commission and was active from 1990 to 1993. The current council screens and nominates judicial applicants, evaluates the performance of judges and makes evaluation information and recommendations available to the voters, and conducts studies and makes recommendations to improve the administration of justice.

- Statutory language does not indicate that the guidelines are mandatory.
- The court is required to prepare a sentencing report.
- No information was found pertaining to studies on guideline compliance.
- Judges are required to “impose sentences within the ranges set by the Alaska Legislature.” However, “presumptive sentences do not cover all offenses.” For noncovered offenses, judges have more discretion to base the sentence on individual circumstances. Additionally, the court may decrease or increase the presumptive term on the basis of aggravating or mitigating factors.
- The court may modify or reduce a sentence by entering a written order under a motion made within 180 days of the original sentence. The code lists both aggravating and mitigating factors that judges must consider when departing.
- The defendant can appeal (the state may also appeal).

## **Arkansas**

- The code specifically refers to the sentencing standards as voluntary.
- The office of the prosecuting attorney is responsible for the completion of Judgment and Commitment and Judgment and Disposition forms.
- The Arkansas Sentencing Commission has studied the rate of compliance with sentencing standards.
- Judges can depart from the sentencing standards in “nontypical” cases.
- Arkansas requires written reasons for departures for negotiated pleas but not for bench trials.
- A defendant may not appeal a sentence departure.

## **Delaware**

- The 2005 sentencing *Benchbook* indicates that the guidelines are voluntary and nonbinding.
- Completion of sentencing worksheets is required.
- Delaware has not published any studies regarding sentencing compliance.
- Judges may depart from the standard sentence range if they find that there are substantial and compelling reasons justifying an exceptional sentence.
- The governing factor(s) leading to the exceptional sentence must be stated for the record and should be identified in the sentencing order or on the sentencing worksheet.
- A defendant may not appeal a sentence departure.

## **District of Columbia**

- The 2005 practice manual states that the guidelines are voluntary.
- Judges are not required to complete sentencing guideline worksheets.
- The commission has reported some preliminary data on compliance.
- Judges are allowed to depart from the guidelines on the basis of the presence of aggravating or mitigating factors.
- The judge must state on the record the aggravating or mitigating factors that are relied upon. Judges who do not follow the guidelines are encouraged to fill out a sentencing data form specifying the reason(s).
- A defendant may not appeal a sentence departure.

## **Kansas**

- By statute, the court has discretion to sentence anywhere within the sentencing range.
- Completion of guideline worksheets is required.
- One of the commission's objectives is to determine how often guidelines are used, the characteristics of offenders and the offenses committed, the number and types of departure sentences, and the overall conformity of sentences to the sentencing guidelines.

- The sentencing judge must impose the presumptive sentence stated in the guideline, unless there are substantial and compelling reasons for departure.
- If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.
- A departure sentence may be appealed by the defendant (the state may also appeal).

## **Louisiana**

- Statutory language does not indicate that the guidelines are mandatory. However, in 1995, the advisory sentencing guidelines were made voluntary.
- The commission requires completion of sentencing reports.
- No information is readily available pertaining to studies on guideline compliance.
- A judge can reject the guideline recommendation and impose any sentence which is not constitutionally excessive and which is within the statutory sentencing range for the crime for which the defendant has been convicted.
- A court must state on the record any aggravating, mitigating, or other circumstances it takes into account in departing from the recommended sentence.
- A defendant may not appeal on the basis of a departure from the guidelines, although the defendant may appeal a sentence “which exceeds the maximum sentence authorized by the statute under which the defendant was convicted and any applicable statutory enhancement provisions.”

## **Massachusetts**

- Statutory language does not indicate that the guidelines are mandatory.
- All sentences are to be recorded on a sentencing statement, which is then submitted to the Sentencing Commission.
- A compliance report was completed in 2003. In addition, the commission releases an annual *Survey of Sentencing Practices*.
- A sentencing judge may depart from the guideline range by imposing a sentence based on a finding that one or more mitigating or aggravating circumstances exist.

- Reasons for any sentencing departure must be set forth in writing giving the “facts, circumstances, evidence, opinions, and any other matters considered.”
- A defendant may appeal a sentence departure (the state may also appeal).

## **Michigan**

Statutory guidelines were enacted in 1998, and the Sentencing Commission was subsequently disbanded.

- The minimum sentence imposed by a court shall be within the appropriate sentence range under the guidelines in effect on the date the crime was committed.
- Worksheet completion is required, but there is no commission to monitor compliance.
- No information is readily available pertaining to studies on guideline compliance.
- Judges can depart from the appropriate sentence range established under the sentencing guidelines if the court has a substantial and compelling reason for the departure.
- The reasons for departures must be stated on the record.
- A defendant may not appeal a sentence departure.

## **Minnesota**

- The guidelines promulgated by the Sentencing Commission must establish a presumptive, fixed sentence for offenders and are advisory to the District Court.
- Completion of guideline worksheets is required.
- The commission reports annually on sentencing practice.
- Judges are required to sentence within the presumptive range. Judges can depart from the presumptive sentence if there exist identifiable, substantial, and compelling circumstances.
- The judge must disclose in writing or on the record the particular substantial and compelling circumstances justifying a departure.
- A defendant may appeal a sentence departure.

## **Missouri**

- Missouri's Sentencing Report notes that judicial discretion is the cornerstone of sentencing in Missouri courts.
- The Board of Probation and Parole is required to provide the court with a Sentencing Assessment Report (SAR). The SAR summarizes the recommended sentence and the available alternative sentences.
- No compliance studies are readily available.
- Judges have discretion to reduce or increase the sentence recommended by the commission as otherwise allowable by law and to order restorative justice methods when applicable.
- No mention is made of whether written or recorded justifications for departure are required.
- A defendant may not appeal a sentence departure.

## **North Carolina**

The North Carolina Sentencing and Policy Advisory Commission was created by the General Assembly in 1990. The commission's work led to the passage of the Structured Sentencing Act, which established truth in sentencing and prescribed sentencing options for judges on the basis of the severity of the crime and the offender's prior record.

- The guidelines are classified as mandatory because they require a judge in every case to impose a sentence within the designated cell of a sentencing guidelines grid.
- The district attorney completes the prior record form; the judge is required to complete the sentencing judgment form.
- The Sentencing Commission regularly issues reports examining North Carolina's sentencing practices under its system of structured sentencing.
- The guidelines are mandatory, but judges can impose sentences based on aggravating or mitigating circumstances.
- Written justification is required if the court selects a minimum sentence from the aggravated or mitigated sentence range.
- The defendant may appeal a sentence that results from aggravating or mitigating circumstances.



**Ohio**

- Although its guidelines were previously more mandatory, Ohio has moved to an advisory sentencing system.
- Judges are not required to complete guideline worksheets.
- Ohio reports no statewide data regarding sentencing patterns or practices.
- Judges are allowed to depart from the guidelines. Substantial and compelling reasons for departure are not required.
- Reasons for departure are no longer required.
- Sentencing departures are not subject to appeal.

**Oregon**

- The statute indicates that the guidelines are mandatory.
- Judges are required to complete guideline worksheets.
- The commission has studied guideline compliance and departure rates.
- A judge must impose the sentence prescribed on the classification grid unless there are substantial and compelling reasons for departure.
- In the case of a departure, the judge must state on the record the reasons for the departure.
- A defendant may appeal a sentence departure.

**Pennsylvania**

- Statutory language does not indicate that the guidelines are mandatory.
- The district attorney completes a prior record form; the judge is required to complete a sentencing judgment form.
- Sentencing data are used to measure conformity with the guidelines.
- When certain conditions are present, a judge may impose an aggravated or mitigated sentence.

- A judge must state both on the record and on the Guideline Sentence Form the reasons for imposing an aggravated or mitigated sentence.
- Defense can appeal based on the fact that a judge “departed from the guidelines and imposed an unreasonable sentence” (the state can also appeal).

## **Tennessee**

The Criminal Sentencing Reform Act of 2005 created the Task Force on the Use of Enhancement Factors in Criminal Sentencing. The addition of advisory guidelines was established by the Reform Act. No sentencing commission is currently active.

- The statute states that the court must consider, but is not bound by, the advisory sentencing guidelines.
- A uniform judgment document containing sentencing information must be completed.
- No information is readily available pertaining to studies on guideline compliance.
- The judge is directed to impose a sentence within the given range of punishment but may depart on the basis of aggravating or mitigating factors.
- The judge must state on the record or in writing the aggravating or mitigating factors considered, along with any other reasons for the imposed sentence.
- A defendant may not appeal a departure from the sentencing guidelines. A defendant may appeal an excessive sentence but must rebut the presumption that the trial court’s sentence was correct.

## **Utah**

- Statutory language does not indicate that the guidelines are mandatory.
- Guideline forms must be completed by the probation department.
- Utah periodically examines guideline compliance.
- Departures based on aggravating or mitigating circumstances are allowed.
- Any aggravating or mitigating circumstances used to justify a sentencing departure should be stated in open court and included on the judgment and commitment order.
- A defendant may not appeal a sentence departure.

## **Virginia**

The current guidelines structure was adopted when legislation was passed in 1995 to abolish parole and institute truth in sentencing in Virginia. The legislature revised discretionary sentencing guidelines and directed the commission to establish a system that emphasizes accountability of the offender and of the criminal justice system to the citizens of the Commonwealth.

- The Virginia Code specifically states that the guidelines are discretionary.
- While compliance with guideline recommendations is voluntary, completion of guideline worksheets is mandatory.
- Each annual report provides a comprehensive examination of judicial compliance.
- Judges are to be given the appropriate sentencing guideline worksheets and should review and consider the suitability of the applicable discretionary sentencing guidelines.
- If the court sentences outside of the guidelines recommendation, it provides a written explanation for the departure.
- A defendant may not appeal a sentence departure.

## **Washington**

- The system “does not eliminate ... discretionary decisions affecting sentences.”
- Judges are not required to complete sentencing worksheets.
- There are statistical summaries of adult felony sentencing beginning with 1999, which examine the effect that sentencing departures have on sentencing.
- Judges may depart from the presumptive sentence range on the basis of “substantial and compelling reasons justifying an exceptional sentence.”
- Reasons for departure must be explained in writing.
- A defendant may appeal a sentence departure (the state may also appeal).

## **Wisconsin**

The Wisconsin Sentencing Commission and its statutory provisions were eliminated during the 2007-2009 budget cycle. Neither the commission nor any other agency continues to collect and analyze sentencing guidelines worksheets. Sentencing courts are still required to consider the guidelines but do not need to complete or submit guidelines worksheets. No sentencing commission is currently active.

- The guidelines are advisory; the code notes that judges are required to consider the sentencing guidelines but not to follow the guideline recommendation.
- Judges are not required to complete sentencing worksheets.
- The commission does not monitor sentencing guideline compliance.
- Judges are free to deviate from the recommended sentence as they see fit.
- Judges are not required to give any reasons for departure.
- A defendant may not appeal a sentence departure

## **Conclusion**

The Maryland State Commission on Criminal Sentencing Policy is a small independent agency that administers the State's system of voluntary sentencing guidelines. The commission's standard of 65% compliance with the sentencing guidelines is consistently met statewide. Compliance varies by region, but is above 61% in all regions. Sentencing below guidelines is more common than sentencing above guidelines.

Although there is no verifiable way of determining the rate at which sentencing guidelines worksheets are being filled out, some jurisdictions are filling out worksheets at a greater rate than others.

There are approximately 28 active sentencing commissions nationwide. The earliest sentencing commissions, established in the late 1970s, were charged primarily with promulgating sentencing guidelines. Sentencing commissions established more recently tend not to be specifically focused on developing sentencing guidelines, but rather on issues of prison overcrowding, community sentencing alternatives, and reentry strategies. In most states that have guidelines, the guidelines are advisory or voluntary as opposed to mandatory.