

Jurisdiction Profile: Maryland

1. THE SENTENCING COMMISSION

Q. What year was the commission established? Has the commission essentially retained its original form or has it changed substantially or been abolished?

The Maryland Judicial Committee on Sentencing, established by the Court of Appeals, first introduced voluntary, descriptive guidelines for circuit courts in May 1978. A 1979 grant from the National Institute of Justice allowed Maryland to participate in a multi-jurisdictional field test of the guidelines in four jurisdictions representing a diverse mix of populations. Pilot programs started in 1981 and after two years, the guidelines were adopted statewide in July 1983, with approval from the Maryland General Assembly and support from the Judicial Conference.¹

In 1996, the Maryland General Assembly created the Commission on Criminal Sentencing Policy, an advisory commission tasked with making recommendations on criminal sentencing and sentencing guidelines, including, “whether descriptive sentencing guidelines should be retained by the state as a sentencing structure, either in their current form or in a modified form.”² At the completion of that work, the General Assembly in 1999 replaced the advisory Commission with the Maryland State Commission on Criminal Sentencing Policy (MSCCSP).³ To this day, the MSCCSP oversees sentencing policy and maintains sentencing guidelines in Maryland.

Q. Membership: who appoints them, for what terms, with what required qualifications?

The Commission has 19 voting members, three of whom are ex-officio. All members are appointed to serve 4-year terms. There are no specific required qualifications for service.

The governor appoints:

- The chair;
- One State’s Attorney, upon recommendation by the President of the Maryland State’s Attorney Association;
- One criminal defense attorney, upon recommendation by the President of the Maryland Criminal Defense Attorney’s Association;
- One representative from a victim’s advocacy group (vacant as of July 2019);
- One representative from law enforcement;
- One member with a background in criminal justice or corrections policy who is a recognized expert in the field;
- One representative of local correctional facilities; and
- Two representatives of the public.

The Chief Judge of the Court of Appeals either serves on the commission or must designate a judge or former judge of the Court of Appeals or Court of Special Appeals to serve in the Chief’s place. Additionally, the Chief Judge appoints:

- One Circuit Court judge; and

¹ Md. Dep’t of Legislative Services, *Sentencing Guidelines—Maryland and Nationwide 1* (2014), <http://dls.maryland.gov/pubs/prod/CourtCrimCivil/Sentencing-Guidelines-Final-Unsigned.pdf>.

² Md. State Comm’n on Sentencing Policy [MSCCSP], *Origin and Purpose*, <http://www.msccsp.org/About/Origin.aspx> (last visited July 8, 2019).

³ *Id.*

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- One District Court judge.

The Commission also includes:

- The Attorney General or designee;
- The Public Defender or designee;
- Two members of the State Senate, including at least one member of the Senate Judicial Proceedings Committee, appointed by the President of the Senate;
- Two members of the House of Delegates, including at least one member of the House Judiciary Committee, appointed by the Speaker of the House; and
- The Secretary of the Department of Public Safety and Correctional Services or designee.⁴

Q. Is the commission an independent agency, or is it located in or hosted by some other state agency?

The Commission is an independent state agency, established by the Maryland General Assembly within Maryland's Executive Branch. It is affiliated with the Department of Criminology and Criminal Justice at the University of Maryland, and its office is at the University of Maryland in College Park.⁵

Q. How many staff does the commission have? Are they dedicated to the commission, or shared with another agency?

The Commission has four full-time and one part time staff, including an Executive Director, a Research Director, a Program Analyst, an Administrative and Training Coordinator, and a Policy Analyst (whose position is part time). The Commission also occasionally has student interns.⁶ The Commission is closely affiliated with the University of Maryland, which allows it to benefit from shared resources, and helps assure the Commission's independent status through non-partisan review of sentencing data.⁷

Q. What is the commission's current statutory mandate?

By statute, the Commission is tasked with the following core functions:

- Holding annual hearings for public comments about issues that are being studied by the Commission;
- Adopting voluntary sentencing guidelines for ordinary sentences and corrections options;
- Reviewing annually sentencing policy and practice, and reporting to the General Assembly on activities of the preceding year;
- Collecting sentencing guidelines worksheets and automating the information;
- Monitoring sentencing practice and adopting changes to guidelines matrices consistent with the General Assembly's intent in establishing the Commission;
- Holding training and orientation programs for trial court judges, attorney, probation officers, and other interested parties as required;
- Preparing statements containing fiscal and statistical information on proposed legislation affecting sentencing and corrections practice;

⁴ Md. Code Ann., Crim. Proc. § 6-204 (West 2019).

⁵ See MSCCSP, *2017 Annual Report* at 7 (Jan. 2019), <http://www.msccsp.org/Files/Reports/ar2017.pdf>.

⁶ MSCCSP, *Commission Staff*, <http://www.msccsp.org/About/Staff.aspx> (last visited May 7, 2019).

⁷ MSCCSP, *2017 Annual Report* at 7 (Jan. 2019), <http://www.msccsp.org/Files/Reports/ar2017.pdf>.

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- Using a correctional population simulation model to help determine State and local correctional resources.⁸

Q. Do statutes and/or guidelines identify management of prison and jail resources as a goal?

The Maryland Guidelines prioritize the use of correctional resources for the incarceration of violent and career offenders.⁹ The Commission is also tasked with creation and use of a “correctional population simulation model.” The model helps determine what State and local correctional resources are required under current conditions, and what resources would be required to carry out the Commission’s recommended changes to the sentencing guidelines. If the recommendations would result in inmate populations exceeding operating capacities of available facilities, the Commission must present additional sentencing model alternatives.¹⁰ The Commission also must contribute to the legislative process by preparing fiscal and statistical statements on how proposed laws would affect sentencing and corrections practice.¹¹

There has been bipartisan support for a data-driven approach to reduce the State’s incarcerated population, reduce spending on corrections, and reinvest in strategies that increase public safety and reduce recidivism.¹² These goals culminated in the Justice Reinvestment Act of 2016 which raised the threshold for felony theft, revised drug penalties, and employed efforts to curb sanctions for probation violations.¹³ The Act is projected to save \$80.5 million dollars by reducing both the current prison population and growth, while investing millions of dollars in the treatment of substance use disorders.¹⁴

Q. Are sentencing practices studied by means of annual or other regular data sets? If so, are those data sets made available to outside researchers?

The statute requires the Commission to collect sentencing worksheets and monitor sentencing practice, and requires judges to consider the guidelines in sentencing.¹⁵ The Commission collects worksheets for criminal cases originating in circuit courts and compiles the case and offender characteristics into an annual data set. The Commission prepares written annual reports based on its review of this data; these reports are submitted to the General Assembly and are also made available to the public on the Commission’s website.¹⁶

⁸ See Md. Code Ann., Crim. Proc. §§ 6-206, 6-208 – 6-210, 6-212 (West 2019).

⁹ Md. Code Ann., Crim. Proc. § 6-202 (West 2019).

¹⁰ Md. Code Ann., Crim. Proc. § 6-213 (West 2019).

¹¹ Md. Code Ann., Crim. Proc. § 6-212 (West 2019).

¹² Justice Reinvestment Coordinating Council, S.B. 602, 2015 Sess. (Md. 2015), http://mgaleg.maryland.gov/2015RS/fnotes/bil_0002/sb0602.pdf.

¹³ The Pew Charitable Trusts, *Maryland’s 2016 Criminal Justice Reform* (2017), https://www.pewtrusts.org/-/media/assets/2017/11/pspp_marylands_2016_criminal_justice_reform.pdf.

¹⁴ *Id.* at 1.

¹⁵ Md. Code Ann., Crim. Proc. § 6-210 (West 2019) (requiring the Commission to collect worksheets and monitor practice); § 6-216 (West 2019) (requiring judges to consider the guidelines).

¹⁶ Md. Code Ann., Crim. Proc. § 6-209 (West 2019); See also MSCCSP, *Reports*, <http://www.msccsp.org/Reports/Default.aspx> (last visited July 9, 2019) (the Commission’s website provides PDF copies of annual reports dating back to 1999).

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The data sets are available to the public. The Commission is required to make available to the public any information within its current system, including complete data sets, annual reports, and periodic topical reports.¹⁷ A data request form can be found at the Commission website.¹⁸

2. THE GUIDELINES

Q. When were the guidelines first implemented?

The guidelines have been in place since 1983.¹⁹

Q. In recent years, have they been modified at least once a year?

Since 2006, the Commission has issued updates to the guidelines at least once a year.²⁰ The Commission has set a goal of 65% as the benchmark standard for guidelines compliance and will consider revisions to the guidelines if sentencing departures are made in more than 35% of cases.²¹ The Commission must report any guidelines revisions to the General Assembly on or before January 31 of each year.²²

Guidelines are also updated to include new or amended crime legislation.²³ For example, each year, the Guidelines Subcommittee reviews all new and revised offenses adopted by the General Assembly and provides recommendations to the full Commission for Seriousness Category classifications.²⁴

Q. Do the commission's recommended initial or modified guidelines require affirmative legislative approval, or do they take effect subject to legislative override?

Legislative approval is not required, likely because the guidelines are voluntary. Rather, the Commission creates regulations following the process delineated in the state's Administrative Procedure Act.²⁵

Q. Do the sentencing guidelines only apply to felonies, or are some misdemeanors and other lesser offenses also covered? Are some felonies excluded (e.g., those subject to life and/or death penalty)?

The sentencing guidelines apply to both felonies and misdemeanors, and felonies subject to life sentences are included. The guidelines do not specifically exclude any felonies.²⁶ Maryland repealed the death penalty in 2013, so that is not a component of the guidelines.²⁷

¹⁷ MSCCSP, *Information Access and Dissemination Policy*, (May 2008), http://www.msccsp.org/Files/Data/MSCCSP_Info_Request_Policy.pdf.

¹⁸ MSCCSP, *Information Request Form*, <http://www.msccsp.org/Data/Inform.aspx> (last visited July 9, 2019).

¹⁹ MSCCSP, *Sentencing Guidelines Overview*, <http://www.msccsp.org/Guidelines/Overview.aspx> (last visited July 9, 2019). From 1981 to 1983 the guidelines were tested in four pilot jurisdictions.

²⁰ See MSCCSP, *Maryland Sentencing Guidelines Manual, June 2001 to Present*, http://www.msccsp.org/Guidelines/MSGM_2001_Present.aspx (last visited July 9, 2019).

²¹ MSCCSP, *2018 Annual Report* at 50–59 (Jan. 2019), <http://www.msccsp.org/Files/Reports/ar2018.pdf>.

²² See Md. Code Ann., Crim. Proc. § 6-209 (West 2019).

²³ MSCCSP, *Origin and Purpose*, <http://www.msccsp.org/About/Origin.aspx> (last visited July 9, 2019).

²⁴ See MSCCSP, *2018 Annual Report* at v (Jan. 2019), <http://www.msccsp.org/Files/Reports/ar2018.pdf>.

²⁵ Md. Code Ann., Crim. Proc. § 6-211 (West 2019) (any changes to the sentencing guidelines are subject to the procedures outlined in Title 10, Subtitle 1 of the State Government Article of the Maryland Code).

²⁶ See Md. Sentencing Guidelines Manual Appendix A (July 2019) (Appendix A contains the current Sentencing Guidelines Offense Table, categorizing each current criminal offense).

²⁷ See Death Penalty Information Center, *Maryland*, <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/maryland>.

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Q. Is a grid used? Are there multiple grids? How many severity levels does the grid contain?

There are three guideline-scoring matrices (grids) that cover person offenses, drug offenses, and property offenses respectively. All matrices have the same criminal history axis, known in Maryland as the “Offender Score,” while the severity axis differs for each matrix.²⁸

The Person Offense Matrix has an Offense Score axis that ranges from one (least serious) to fifteen (most serious). While the least severe offenses are probation-eligible, the highest-scoring offenses may be punished with life imprisonment. First-degree murder carries a suspendable mandatory life imprisonment term and should replace any range calculated using the grid.²⁹

The Drug Offense and the Property Offense Matrices each have Offense Seriousness Category axis ranging from VII (least serious) to II (most serious). The drug matrix breaks level III into subcategories (a, b, c) for offenses of differing severities involving marijuana or MDMA.³⁰ Neither the drug nor the property matrix recommends a life sentence for any category of offense, regardless of the Offender Score.³¹

Q. How is the presumptive sentence determined?

For each of the three matrices, a recommended sentence range is found at the matrix square where an offense seriousness score (on the vertical axis) and the *offender score* (on the horizontal axis) intersect. Many grid cells contain very wide recommended sentence ranges (for example, 18 to 30 years).³²

All three matrices use the same *offender score* axis (frequently referred to as criminal history or prior record score in other jurisdictions).³³ For the property- and drug-crime matrices, the vertical axis consists of the *offense seriousness category*, which is derived from a table listing all Maryland crimes and their corresponding seriousness. In contrast, for the person-crime matrix, the vertical axis consists of an *offense score* which takes into account not only the offense’s seriousness but also the presence of a weapon, injury to victims, and the vulnerability of special victims.³⁴

None of the Maryland grids make specific prison or jail disposition recommendations, although a few cells contain a recommendation for probation only; otherwise the jail or prison determination is a product of the length of sentence imposed (sentences of a year or less are served in jail, those over 18 months in prison, and those between 12 and 18 months may be served in jail or prison at the judge’s discretion).³⁵

²⁸ See Md. Sentencing Guidelines Manual §§ 8.2–8.4 (Jul. 2019).

²⁹ *Id.* § 8.2.

³⁰ *Id.* §§ 8.3–8.5. The Drug Offense Matrix has three distinct sub-categories of level III crimes designed to help distinguish between importation of marijuana or MDMA and importation of other illegal drugs. In addition, Drug Offense Seriousness Category VI is not currently in use. *Id.* § 8.3.

³¹ *Id.* §§ 8.3–8.4.

³² See, e.g., Md. Sentencing Guidelines Manual §§ 8.2–8.4 (July 2019) (an individual with an offender score of “6” and an offense seriousness of score of “9” on the Offense Against Person grid is within an 18-30 year sentencing range).

³³ Compare *id.* § 8.3 (Nov. 2017) (utilizing an *offender score* axis), with Minn. Sentencing Guidelines § 4.A (2017) (the Minnesota grid uses a *criminal history score* axis), and Penn. Sentencing Guidelines Implementation Manual § 303.16 (7th ed. 2012) (the Pennsylvania grid uses a *prior record score* for a similar effect).

³⁴ Md. Sentencing Guidelines Manual § 6.1 (Oct. 2017).

³⁵ Dep’t of Legislative Services, *Maryland Diminution Credit System* at 1 (2011), <http://dls.maryland.gov/pubs/prod/CourtCrimCivil/Dimunition-Credits.pdf>.

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Q. Is the choice among types of sentences regulated by a “disposition” or other prison in/out line? Are “out” sentences accompanied by suspended execution of prison or suspended imposition of sentence? By definitive preclusion or prison for those cases?

There is no strictly defined in/out line in the guidelines for determining whether an offender will receive a prison sentence, a jail sentence, or a suspended sentence. Maryland does not have a strict “disposition” line indicating presumptive commitment to state imprisonment, or a stayed sentence, as do some jurisdictions.³⁶ However, there are sentences on two of the matrices (person and drug) that have maximum recommended sentences of probation, and on the third (property) a maximum recommended sentence as low as one month. A number of cells on each matrix have sentence ranges of probation to less than one year, so these cells could effectively be considered as analogous to non-prison recommendation cells in other jurisdictions.³⁷

The length of shorter sentences in Maryland can determine whether an offender is incarcerated in a DOC facility or given a sentence in a local detention facility. “A person serving a sentence of longer than 18 months is incarcerated in a DOC facility. A person serving a sentence of one year or less [...] is sentenced to a local detention facility. For a person sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC.”³⁸

Suspended time is *not* considered in determining whether a sentence falls within a recommended guidelines range, while credit for time served and home detention are considered.³⁹ The Commission does have a list, “Guidelines Offenses with Non-Suspendable Mandatory Minimum Penalties,” which lays out mandatory minimum incarceration sentences for certain crimes.⁴⁰

Finally, a sentence to a correctional options program is only deemed compliant by the MSCCSP if the initial sentence plus any suspended sentence falls within or exceeds the guidelines range and the case does not include a crime of violence, child sexual abuse, or escape.⁴¹

Q. Are there border boxes or other categories permitting multiple sentence types?

There are several cells that contain guideline sentences ranging from probation to incarceration, allowing a judge discretion to choose between the two. For example, for a level 4 offense against a person where the offender score is 0, the guideline sentence is between probation and 3 years. In addition, as mentioned above, judges have discretion to sentence an offender to either jail or prison for sentences of 12 to 18 months; accordingly, cells that recommend incarceration sentences within that range permit sentences of jail or prison incarceration.⁴²

³⁶ See, e.g., Minn. Sentencing Guidelines § 4.A (2016) (the Minnesota sentencing grid contains a “disposition” line; a score on one side of the line results in a presumptive stayed sentence, a score on the other side results in presumptive commitment to state imprisonment).

³⁷ Md. Sentencing Guidelines Manual §§ 8.2–8.4 (July 2019).

³⁸ Dep’t of Legislative Serv., *Maryland Diminution Credit System* at 1 (2011), <http://dls.maryland.gov/pubs/prod/CourtCrimCivil/Diminution-Credits.pdf>.

³⁹ Md. Sentencing Guidelines Manual §§ 13.1–13.3 (July 2019).

⁴⁰ MSCCSP, *Guidelines Offenses with Non-Suspendable Mandatory Minimum Penalties*, (2016) http://www.msccsp.org/Files/Guidelines/mand_min_offenses.pdf.

⁴¹ MSCCSP, *2018 Annual Report* at 14, 17, 30, 50 (Jan. 2019), <http://www.msccsp.org/Files/Reports/ar2018.pdf>.

⁴² Md. Sentencing Guidelines Manual §§ 8.2–8.4 (July 2019); Dep’t of Legislative Serv., *Maryland Diminution Credit System* at 1 (Dec. 2011), <http://dls.maryland.gov/pubs/prod/CourtCrimCivil/Diminution-Credits.pdf>.

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Q. Are the guidelines purely advisory, or are they legally binding?

The guidelines are purely advisory. A judge is required to consider the guidelines in deciding on a proper sentence and when deciding whether to impose an ordinary sentence or to sentence an offender to a corrections option program.⁴³ A sentence outside the guidelines recommendation is not a basis for appeal by either party.⁴⁴ Judges are required to state written reasons justifying a decision to sentence outside the advisory recommended ranges. The Commission is making efforts to increase judicial documentation of departure reasons, and while in 2016 judges failed to report in over half of departures,⁴⁵ in 2017 judges provided the reason for departure in 63% of cases.⁴⁶

3. DEPARTURES AND SIMILAR ADJUSTMENTS TO GENERALLY-RECOMMENDED SENTENCES

Q. What is the overall/general standard for departure?

Judges have discretion to adhere to or depart from the guidelines.⁴⁷ If a judge chooses to depart from the guidelines, “the judge shall document on the guidelines worksheet the reason or reasons for imposing a sentence outside of the recommended guidelines range.”⁴⁸ However, many judges do not comply with this documentation requirement. In 2017, judges provided departure reasons in 63% of departure cases.⁴⁹ This is an increase from 2016, judges provided reasons for departure in only 46.3% of departure cases.⁵⁰

Q. Are there lists of aggravating and mitigating circumstances permitting departure? If so, are such lists non-exclusive? Is there a list of prohibited factors?

The Sentencing Guidelines manual provides common reasons for departures both below and above the guidelines range. Judges are encouraged to utilize these.⁵¹ However, the lists are not exclusive, and there are no prohibited factors for departure.⁵²

Aggravating circumstances that may result in departure above the guidelines range include factors relating to the seriousness of the offense or the magnitude of the harm to the victim. Some examples include participation in a major controlled substance offense, the vicious or heinous nature of the conduct, excessive harm to the victim, or exploitation of a position of trust.

⁴³ Md. Code Ann., Crim. Proc. § 6-216 (West 2019). A correctional options program is a graduated series of sanctions, treatment, and other program assistance focusing on non-violent offenders. Md. Code Regs. 12.02.25.01 (2019).

⁴⁴ See *White v. State*, 639 A.2d 194, 205 (Md. Ct. Spec. App. 1994) stating that a “sentencing judge is vested with virtually boundless discretion.” *But see Matthews v. State*, 36 A. 3d 499, 508 (Md. 2012) holding that a sentence imposed in violation of the maximum sentence identified in a binding plea agreement is an inherently illegal sentence.

⁴⁵ Md. Code Regs. 14.22.01.05(A) (2019); MSCCSP, *2016 Annual Report* at 58 (Jan. 2017), <http://www.msccsp.org/Files/Reports/ar2016.pdf>.

⁴⁶ MSCCSP, *2017 Annual Report* at 61 (Jan. 2018), <http://www.msccsp.org/Files/Reports/ar2017.pdf>.

⁴⁷ Md. Code Ann., Crim. Proc. § 6-211 (West 2019).

⁴⁸ Md. Code Regs. 14.22.01.05(A) (2019).

⁴⁹ MSCCSP, *2017 Annual Report* at 61 (Jan. 2018), <http://www.msccsp.org/Files/Reports/ar2017.pdf>.

⁵⁰ MSCCSP, *2016 Annual Report* at 58 (Jan. 2017), <http://www.msccsp.org/Files/Reports/ar2016.pdf>.

⁵¹ Md. Sentencing Guidelines Manual §§ 14.1–14.4 (July 2019).

⁵² *But see Johnson v. State*, 75 A. 3d 322, 324 (Md. Ct. Spec. App. 2013) (citing *Collins v. State*, 861 A. 2d 727 (Md. 2004)) (stating that an illegal sentence may arise where the sentencing judge was motivated by ill will, prejudice, or other impermissible considerations).

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Mitigating circumstances that may result in departure below the guidelines range include primarily offender related factors such as diminished capability for judgment and restorative efforts made after the offense.⁵³

Q. Do the guidelines expressly address mitigations based on a guilty plea, acceptance of responsibility, and/or providing assistance to law enforcement?

The guidelines expressly address plea agreements, stating that parties that reach a plea agreement that calls for a reduced sentence may benefit from a departure below the guidelines range.⁵⁴ Additionally, sentences pronounced pursuant to an ABA plea (one in which the judge, prosecutor, and defense have agreed to the terms of the sentence before the hearing) are considered guidelines compliant even if they are outside of the recommended guidelines range.⁵⁵ They do *not* specifically address acceptance of responsibility or providing assistance to law enforcement, but nor do they bar either of these factors from consideration.⁵⁶

Q. Are there limits on the degree of durational (length-of-custody) departure?

Judges are only required to document reasons for a durational departure from the guidelines.⁵⁷ However, length of custody may not exceed the statutory limits for a given offense.⁵⁸

Q. Are there limits on the availability of dispositional departure (executed-prison vs. stayed sentence)?

Because the guidelines are advisory, a judge may depart from a recommended sentence, and is only required to document the reason for a dispositional departure from the guidelines.⁵⁹ However, in deciding whether to sentence a defendant to a corrections options program (i.e. an alternative sentence), a judge must primarily consider public safety.⁶⁰

4. PRISON RELEASE DISCRETION

Q. Does the jurisdiction utilize parole release discretion or has it been abolished for all or most offenders?

This jurisdiction utilizes parole release discretion. An inmate is generally eligible for parole after serving at least one-fourth of his aggregate sentence. For violent crimes, an inmate must serve one-half his aggregate sentence.⁶¹ As discussed below, the statute requires judges to announce the minimum amount of time a person must serve for a crime of violence in open court.⁶²

⁵³ Md. Code Regs. 14.22.01.05 (2019).

⁵⁴ *Id.*

⁵⁵ MSCCSP, *2018 Annual Report* at 50 (Jan. 2019), <http://www.msccsp.org/Files/Reports/ar2018.pdf>.

⁵⁶ Md. Code Regs. 14.22.01.05 (2019).

⁵⁷ Md. Code Regs. 14.22.01.05(A) (2019); *See also* MSCCSP, *Sentencing Guidelines Overview*, <http://www.msccsp.org/Guidelines/Overview.aspx> (last visited July 16, 2019).

⁵⁸ *See, e.g.* Md. Code Ann., Crim. Proc. § 6-216 (West 2019).

⁵⁹ Md. Code Regs. 14.22.01.05(A) (2019).

⁶⁰ Md. Code Ann., Crim. Proc. § 6-216(a)(2) (West 2019).

⁶¹ *See* Md. Code Ann., Corr. Servs. § 7-301 (West 2019).

⁶² Md. Code Ann., Crim. Proc. § 6-217 (West 2019). The guidelines also require that a judge notes on a sentencing guidelines worksheet whether or not there was an announcement regarding the mandatory 50% incarceration sentence. Md. Sentencing Guidelines Manual § 12.6 (Oct. 2017).

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Inmates can often be released earlier to participate in drug and alcohol treatment, mental health treatment, or residential treatment in the interest of the inmate's expected or newborn child. Inmates serving time for crimes of violence and certain drug crimes such as fourth-time offenses are excluded from early release to treatment programs.⁶³

For inmates sentenced for violent crimes, a court is required to state at sentencing the minimum time the defendant must serve before becoming eligible for parole.⁶⁴ The guidelines require a judge to note on a worksheet if the court announced the mandatory serving of at least 50% of a sentence for violent crimes.⁶⁵

Q. Does this jurisdiction have a "truth in sentencing" law, limiting the extent of early release?

Early release is limited for certain violent crimes. The Code of Criminal Procedure mandates that:

"When a sentence of confinement that is to be served is imposed for a violent crime . . . for which an offender will be eligible for parole . . . the court shall state in open court the minimum time the offender must serve before becoming eligible for parole and before becoming eligible for conditional release under mandatory supervision . . ."⁶⁶

An inmate is generally eligible for parole after serving at least one-fourth of his aggregate sentence. An inmate may be released earlier for participation in a treatment program, with the exception of those convicted of violent crimes or repeat offenses for some drug crimes. Those convicted of violent crimes on or after October 1, 1994 have stricter mandatory time-served than those convicted of non-violent crimes. Violent offenders must serve the greater of one half of their aggregate sentence for the violent crimes committed, one fourth of their total aggregate sentence, or a period equal to the term that they were not eligible for parole.⁶⁷

In 2017, Maryland Governor Larry Hogan responded to the high homicide rate in Baltimore by calling for truth-in-sentencing legislation.⁶⁸ The truth-in-sentencing laws were aimed at preventing repeat offenses by violent offenders by limiting suspended sentences and limiting diminution (good behavior) credits. Truth-in-sentencing laws have yet to be enacted, perhaps because of criticism that they prevent incentives for good behavior and renege on goals from Gov. Hogan's own Justice Reinvestment Act.⁶⁹

Q. Do recommended and imposed sentences under the guidelines set the minimum time to serve in prison, the maximum, both the minimum and maximum, a target/recommended/expected prison duration, or some other combination of these parameters?

The guidelines set a recommended range that includes both a minimum and a maximum penalty, but they do not address minimum or maximum actual incarceration length (which is often a function of parole discretion). Thus, there is ordinarily no targeted or expected duration. A judge may select a sentence within a recommended range, but may also depart from the recommended sentence and impose a sentence

⁶³ See Md. Code Ann., Corr. Servs. § 7-301(a)(3)(i) (West 2019).

⁶⁴ Md. Code Ann., Crim. Proc. § 6-217 (West 2019).

⁶⁵ Md. Sentencing Guidelines Manual § 12.6 (Oct. 2017).

⁶⁶ Md. Code Ann., Crim. Proc. § 6-217 (West 2019).

⁶⁷ See Md. Code Ann., Corr. Servs. § 7-301 (West 2019).

⁶⁸ Legis. Bill Hist. MD H.B. 100 (Md. 2018).

⁶⁹ American Civil Liberties Union of Maryland, *Testimony for the House Judiciary Committee on HB 678* (2018), https://www.aclu-md.org/sites/default/files/field_documents/hb_678_repeat_violent_offender.pdf.

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below the recommended minimum or above the recommended maximum as long as it acceptable under statute. Once a sentence is set, however, it represents the maximum time that a defendant may serve.⁷⁰

Q. Is the period of post-prison supervision independent of any unserved prison term?

An inmate who is serving a sentence of more than 18 months and has earned enough diminution credits for release is released under mandatory supervision that lasts until the end of his full term.⁷¹ The inmate is subject to the same rules and conditions that apply to parolees.⁷² There is no period of post-release supervision for most inmates who have served their full term.⁷³

Q. What good-time credits do prisoners earn? Is program participation considered?

Most Maryland inmates sentenced to the custody of the DOC can reduce the length of their incarceration by earning up to 20 “diminution of confinement” credits per month.⁷⁴ Local correctional systems have different procedures for issuing and revoking diminution credits.⁷⁵

Diminution credits are awarded for good conduct, education, work tasks and special projects.⁷⁶ Education includes obtaining a technical certificate, a high school diploma, an associate degree, or a bachelor’s degree and shall allow for a deduction not less than 60 days and not more than 730 days.⁷⁷ Special Project credits include participation in rehabilitation programs.⁷⁸ Good Conduct Credits are advanced to an inmate at intake at a rate of either five days per month or ten days per month, subject to inmate’s future good behavior.⁷⁹ The credits are a behavioral incentive and a means of reducing prison overcrowding. Credits are awarded automatically, and are not subject to discretion.⁸⁰

Q. Are prisoners subject to exceptional, “second-look” releasing mechanisms?

Inmates sent to prison under the guidelines are eligible for various furlough programs, or for pardon, but prison terms are not otherwise subject to exceptional, “second-look” releasing mechanisms. However, compassionate release exists in cases of serious medical debilitation or incapacitation.⁸¹

⁷⁰ Md. Sentencing Guidelines Manual § 8 (Oct. 2017).

⁷¹ Md. Code Ann., Corr. Servs. § 7-501 (West 2019).

⁷² See, e.g., Md. Code Ann., Corr. Servs. § 7-502 (West 2019).

⁷³ However, note that convictions for certain sex crimes, for example, may result in sentences that include lifetime supervision. See, e.g., Md. Code Ann., Crim. Law § 11-723 (West 2019).

⁷⁴ Dep’t of Legislative Services, *Maryland Diminution Credit System* at 6, 8 (Dec. 2011), <http://dls.maryland.gov/pubs/prod/CourtCrimCivil/Diminution-Credits.pdf>. Note that inmates who have sentences related to rape/sexual assault of victims under age 16 or who are imprisoned for a lifetime sexual offender supervision violation are not eligible for these credits. *Id.* at 1.

⁷⁵ *Id.* at 8.

⁷⁶ *Id.* at 2–6; H.B. 294, Md. Legislature, Reg. Sess. 2019-2020 (Md. 2019).

⁷⁷ H.B. 294, Md. Legislature, Reg. Sess. 2019-2020 (Md. 2019).

⁷⁸ Dep’t of Legislative Services, *Maryland Diminution Credit System* at 5 (Dec. 2011), <http://dls.maryland.gov/pubs/prod/CourtCrimCivil/Diminution-Credits.pdf>.

⁷⁹ If the inmate’s term of confinement includes a sentence for a crime of violence (as defined in Criminal Law Article § 14-1011) or distribution of controlled dangerous substances, the rate is five days per month. *Id.* at 3.

⁸⁰ *Id.* (citing *Stouffer v. Staton*, 152 Md. App. 586, 592 (2003)).

⁸¹ Md. Code Ann., Corr. Servs. § 7-309 (West 2019) (medical parole).

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5. RELATIONSHIP TO CRIMINAL LAWS

Q. Did the guidelines replace some or all previous statutory maxima?

Guideline sentences may not exceed the maximum sentence provided by law.⁸²

Q. Are guidelines built on top of (i.e., equal to or more severe than) any remaining mandatory minima, or are they set independently and over-ridden whenever a mandatory applies?

The guidelines are required to reflect mandatory minimum sentences; thus, they recommend sentences that are equal to or more severe than mandatory minima.⁸³

Q. Are some “mandatory” minima subject to case-specific “departure” or other exception?

Due to 2015 legislation, the court may now depart from certain mandatory minimum drug sentences that were imposed on or before September 30, 2017, after giving due regard to the nature of the crime, the defendant’s characteristics, and the defendant’s chances of successful rehabilitation. The court must find that the imposition of the mandatory minimum would result in substantial injustice to the defendant and that such a sentence is not necessary for the protection of the public.⁸⁴

6. CRIMINAL HISTORY SCORING

Q. What are the major components of the criminal history score?

The criminal history score in Maryland is called the “Offender Score.” It is calculated by taking into account the offender’s relationship to the criminal justice system when the offense occurred, juvenile delinquency, any prior adult criminal record, and any adult probation or parole violations.⁸⁵

Q. Does the jurisdiction utilize “decay”/washout rules, that is, do old convictions count less or drop out? Which older convictions decay, when, and how?

Juvenile offenses result in a score of 0 (“washout”) if the offender is 23 years or older by the date of the offense, if the offender has been crime-free for five years, or if the offender has only one finding of delinquency.⁸⁶ In addition, certain offenses that are part of an adult criminal record cannot be included in computing that score (e.g. violations of public local laws; municipal infractions; contempt; criminal non-support; marijuana possession or marijuana paraphernalia possession convictions that qualify for a non-incarceration penalty due to evidence of medical necessity; etc.).⁸⁷

⁸² Md. Code Ann., Crim. Proc. § 6-216(b)(1) (West 2019).

⁸³ See Md. Sentencing Guidelines Manual § 10.3 (July 2019) (“If the guidelines range is below a non-suspendable mandatory minimum, that minimum replaces the guidelines range. This is because a person cannot be sentenced to a term that is shorter than the non-suspendable mandatory minimum.”).

⁸⁴ Md. Code Ann, Crim. Law § 5-609.1 (West 2019); 2015 Md. Laws Ch. 490, 14.

⁸⁵ Md. Sentencing Guidelines Manual § 7.1 (July 2019). The relationship to the criminal justice system variable takes into account offenders who were adjudicated guilty and were on parole, on probation, incarcerated, on work release, on mandatory supervision, escaped, or had any comparable status when the instant offense was committed. It does not take into account offenders on unsupervised probation for offenses not punishable by imprisonment.

⁸⁶ *Id.* § 7.1(B).

⁸⁷ *Id.* § 7.1(C).

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The Criminal Record Decay Factor also reduces a general criminal record score by one level (e.g. from a major crime to a moderate crime) if an offender has lived in the community for at least ten years prior to the instant offence without criminal justice system involvement.⁸⁸

Q. Do the Guidelines include any other significant limitations on how criminal history can be used (e.g., limits on eligibility for high-history categories; adjustments for older offenders)?

There is a maximum “offender score” that no offender can surpass regardless of how many additional convictions exist. In other words, once an offender achieves a score of “7 or more” points, they cannot surpass that score no matter the severity of their record.⁸⁹ Regardless of criminal history, the adjusted guidelines for first degree murder is always a mandatory suspendable term of “life to life.”⁹⁰

7. MULTIPLE CURRENT OFFENSES

Q. Are consecutive sentences limited? If so, how (e.g. prohibited, permissive, or mandatory in certain cases; limits on total duration; use of a multiple-counts enhancement formula)?

Consecutive sentencing is allowed in Maryland without limitation, even if the sentence derived effectively amounts to a life sentence.⁹¹ However, there are no mandatory consecutive sentences.

The voluntary sentencing guidelines suggest that judges may choose to impose a consecutive sentence for multiple seriousness category I or II offenses that occurred within the same criminal event *and/or* for multiple criminal events that are sentenced at the same time. A consecutive sentence’s range is derived by adding together the sentence ranges for each offense (i.e. Forgery: 8 years - 10 years + Assault 1: 6 years - 12 years = 14 years – 22 years) and then finding a sentence within that aggregate range (i.e. 16 years). The sentence falls within the guidelines when the net time to be served (i.e., the initial sentence minus suspended sentence) falls within the overall guidelines range.⁹²

When there are multiple victims for the same offense in a single criminal event, the upper guidelines ranges can be added to enhance the maximum sentence.⁹³ For example, the guidelines range for 2nd Degree Assault is 2-5 years; if there were three victims in the same event, the guidelines range would be 2-15 years.

Q. In consecutive sentencing, how is the offender’s criminal history taken into account?

The offender’s criminal history has no special impact in consecutive sentencing, other than the use of the offender score in the sentencing guidelines matrices, which can decrease or increase the minimum and

⁸⁸ *Id.* § 7.1(C)(2). An offender was involved in the criminal justice system if the offender was on parole, on probation, incarcerated, on work release, on mandatory supervision, was an escapee, or had a comparable status at the time the offense was committed. An offender is not in the criminal justice system if they were on unsupervised probation for an offense not punishable by imprisonment.

⁸⁹ Md. Sentencing Guidelines Manual §§ 8.1–8.4.

⁹⁰ *Id.* at 8.5.

⁹¹ See *Brooks v. Warden*, 226 A.2d 354, 356 (Md. Ct. Spec. App. 1967). Note that although this case precedes the creation of sentencing guidelines, it is still considered good law.

⁹² See Md. Sentencing Guidelines Manual §§ 9.1-9.4 (July 2019).

⁹³ *Id.* § 10.1.

maximum sentence for each offense and thus have an impact on the aggregate possible length of consecutive sentences.⁹⁴

8. ENFORCEMENT MECHANISMS (LOCATION ON THE “ADVISORY”-TO-“MANDATORY” CONTINUUM)

Q. Are recommended sentences enforced by prosecution and defense sentence appeals?

The sentences are purely advisory. There is no mechanism to appeal departures from the guidelines.⁹⁵

Q. Are other enforcement methods used (e.g., required reasons for departure; published judge-specific departure rates; narrow permitted sentencing alternatives and/or ranges)?

Under the Code of Maryland Regulations, judges are required to report reasons for departure from the guidelines.⁹⁶ In practice, however, reporting has not been consistent; in 2018, departure reasons were reported in 75% of cases (up from 46.4% in 2016 and 63% in 2017).⁹⁷ Of the departures reported in 2018, the most common reason for downward departure was that the parties reached a plea agreement; the most common reason for upward departure was the recommendation of the State’s Attorney or the Division or Parole and Probation.⁹⁸ In general, departures are far more likely to occur downward as opposed to upward.⁹⁹

Q. Are some deviations from the guidelines not deemed departures?

There are three instances where the Commission considers a sentence that deviates from the guidelines to be compliant:

1. The pronounced sentence is pursuant to an ABA plea agreement; that is, one in which the judge, prosecutor, and defense have agreed to the terms of the sentence before the hearing.
2. The court sentences the individual to a period of pre-sentence incarceration time with no additional post-incarceration time (“time served”) and the pre-sentence incarceration time exceeds the upper guidelines range for the case.
3. The court sentences the individual to corrections options programs (e.g., drug court; home detention), 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.¹⁰⁰

⁹⁴ See MSCCSP, *Maryland Sentencing Guidelines Worksheet*, (Apr. 2013), http://www.msccsp.org/Files/Guidelines/Worksheet_1.8.pdf.

⁹⁵ *Teasley v. State*, 470 A.2d 337, 340 (1984) (citing *Logan v. State*, 425 A.2d 632 (1981); *Kaylor v. State*, 400A.2d 419 (1979); *Clark v. State*, 396 A.2d 243 (1979)). *But see* *Johnson v. State*, 75 A.3d 322 (Md. Ct. Spec. App. 2013) (stating that sentences may be appealed if they are otherwise illegal (e.g. do not conform to statutory limits, are motivated by prejudice/ill will, or violate the prohibition on cruel and unusual punishment or other constitutional requirements)).

⁹⁶ Md. Code Regs. 14.22.01.05(A) (2019).

⁹⁷ MSCCSP, *2018 Annual Report* at 57 (Jan. 2019), <http://www.msccsp.org/Files/Reports/ar2018.pdf>.

⁹⁸ *Id.* at 58.

⁹⁹ MSCCSP, *2018 Annual Report* at 54 (Jan. 2019), <http://www.msccsp.org/Files/Reports/ar2018.pdf>.

¹⁰⁰ MSCCSP, *2018 Annual Report* at 44, 50 (Jan. 2019) (stating that the MSCCSP has an interest in promoting alternatives to incarceration).

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Q. Do some deviations require especially strong justification? Or minimal justification?

Departures are at a judge's discretion, though written justification for departure is required on a sentencing worksheet. The frequency by which judges provided reasons for departure from the guidelines increased from 63.1% in 2017 to 75.1% in 2018.¹⁰¹

¹⁰¹ In 2018, departure reasons were reported in 75.1% of cases. MSCCSP, *2018 Annual Report* at 57 (Jan. 2019), <http://www.msccsp.org/Files/Reports/ar2018.pdf>.