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David A. Soulé, Ph.D.

December 28, 2017

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The Honorable Daniel M. Long
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Oversight Board
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The Honorable Thomas V. "Mike" Miller, Jr.
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Senate of Maryland
State House, H-107
Annapolis, MD 21401

The Honorable Michael E. Busch
Speaker
Maryland House of Delegates
State House, H-101
Annapolis, MD 21401

Re: Report required by SB 1005/Ch. 515, Sec. 8, 2016) (MSAR # 10910)

Gentlemen:

In accordance with the charge given to the Commission in Section 8 of the Justice Reinvestment Act (SB 1005/Chapter 515, 2016), I submit this report on behalf of the Maryland State Commission on Criminal Sentencing Policy (MSCCSP). Our charge was "that on or before January 1, 2018, the State Commission on Criminal Sentencing Policy shall study how more alternatives to incarceration may be included in the sentencing guidelines and shall submit a report of" its findings and recommendations to each of you.

The MSCCSP wishes to acknowledge and thank the agencies and individuals whose contributions to the information provided in this report enabled us to complete this study. We are especially grateful to the Administrative Office of the Courts for distribution of an online survey, as well as to the many judges, court staff, local corrections officials, and Parole and Probation supervisors who participated in the survey process, as these responses allowed the MSCCSP to assess and summarize the availability of alternatives to incarceration throughout the State. This report is accessible for viewing and downloading via the Commission website at: www.msccsp.org/Reports.

If you have any questions or comments regarding this report, please contact me.

Sincerely,

David A. Soulé
Executive Director

cc: Sarah Albert, Department of Legislative Services (5 copies)

Maryland State Commission on Criminal Sentencing Policy

Study on Alternatives to Incarceration

January 1, 2018





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**Maryland State Commission on
Criminal Sentencing Policy**

Study on Alternatives to Incarceration



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December 28, 2017



Maryland State Commission on Criminal Sentencing Policy

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Executive Director

David A. Soulé, Ph.D.

To: The Honorable Lawrence J. Hogan, Jr., Governor
The Honorable Members of the General Assembly of Maryland
The Justice Reinvestment Oversight Board

In accordance with the charge given to the Commission in Section 8 of the Justice Reinvestment Act (SB 1005/Chapter 515, 2016) (MSAR #10910), I submit this report on behalf of the Maryland State Commission on Criminal Sentencing Policy (MSCCSP). Our charge was “that on or before January 1, 2018, the State Commission on Criminal Sentencing Policy shall study how more alternatives to incarceration may be included in the sentencing guidelines and shall submit a report of” its findings and recommendations to each of you.

The MSCCSP wishes to acknowledge and thank the agencies and individuals whose contributions to the information provided in this report enabled us to complete this study. We are especially grateful to the Administrative Office of the Courts for distribution of an online survey, as well as to the many judges, court staff, local corrections officials, and Parole and Probation supervisors who participated in the survey process, as these responses allowed the MSCCSP to assess and summarize the availability of alternatives to incarceration throughout the State. This report is accessible for viewing and downloading via the Commission website at: www.msccsp.org/Reports.

If you have any questions or comments regarding this report, please contact me.

Sincerely,

David A. Soulé
Executive Director

cc: Sarah Albert, Department of Legislative Services

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EXECUTIVE SUMMARY

The Justice Reinvestment Act (JRA) ([Senate Bill 1005/Ch.515, Sec. 8, 2016](#)) requires the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) to study how more alternatives to incarceration may be included in the sentencing guidelines and to submit a report of the findings and recommendations to the Justice Reinvestment Oversight Board, Governor, and General Assembly by January 1, 2018. By guidelines rule, judges in Maryland are able currently to impose a sentence consistent with the sentencing guidelines by utilizing specified alternatives to incarceration, known as corrections options. However, this rule regarding corrections options is either not well known by the criminal justice community, not well understood, or perhaps both. The recommendations provided in this report address this specific issue and offer additional recommendations for the MSCCSP and other agencies to consider to support further the use of alternatives to incarceration for appropriate offenders.

The MSCCSP and its predecessor, the Maryland Commission on Criminal Sentencing Policy, devoted considerable time and effort to the study of intermediate sanction programs or “*corrections options*” or “*correctional options*” programs. Given the comprehensiveness of this prior study, the MSCCSP considered these prior efforts when formulating the proposed recommended actions included in this current study (see Appendix B for a summary of the history of corrections options in Maryland).

Research on the effectiveness of alternatives to incarceration relative to imprisonment has shown repeatedly that the rate of re-offending following non-custodial sanctions is lower than or similar to the rate of re-offending following custodial sanctions (Villettaz, Gillieron, and Killias, 2015). There are a number of resources available to assist policy makers and practitioners with identifying effective alternatives. Two such tools are the National Drug Court Institute’s Annals of Research and Knowledge (ARK) and the National Institute of Justice’s CrimeSolutions.gov. As the State of Maryland continues to promote the use of alternatives to incarceration, resources like the ARK and CrimeSolutions.gov that identify evidence-based programs and practices can inform decisions about which alternatives to incarceration to fund and implement.

In order to further address the directive that commissioned this study, this report reviewed how other jurisdictions incorporate alternatives to incarceration within their sentencing guidelines structures. Guidelines jurisdictions that include alternatives to incarceration can be categorized as

follows: those with grid systems similar to Maryland, those with grid systems more complex than Maryland's, those that codified alternatives to incarceration, and those without grid systems. Examples of alternatives to incarceration utilized in other jurisdictions include straight probation, probation with community confinement or home detention, suspended sentences with a condition of community corrections, drug treatment court, other substance abuse treatment or mental health treatment, weekend incarceration, work release, and fines.

In order to assess how more alternatives to incarceration may be included in Maryland's sentencing guidelines, the MSCCSP decided to gauge the currently available alternatives on a jurisdiction-by-jurisdiction basis. The MSCCSP created an inventory to assess alternatives to incarceration available to circuit court judges. The inventory was distributed to circuit court administrative judges, Parole and Probation field supervisors, and local correctional administrators in each of Maryland's 24 jurisdictions. With the help of the Administrative Office of the Courts (AOC), an online survey was created and distributed to participants via e-mail. The primary findings from the survey include the following:

- Maryland has a robust offering of alternatives to incarceration, but the availability of programs varies from jurisdiction to jurisdiction.
- There were discrepancies within all jurisdictions where more than one respondent answered.
- There are a number of programs available statewide, including Health General Article (HG), § 8-507 commitments, outpatient drug treatment programs, Drinking Driver Monitor Program, and anger management programs.
- Twenty-three of 24 jurisdictions indicated that a variety of other alternatives to incarceration were available within their jurisdiction, including electronic monitoring, home confinement, work release, community service, mental health treatment programs, and parenting classes.
- Respondents felt generally that drug and alcohol treatment programs were the most effective alternatives to incarceration.
- The majority of respondents (68%) want to see additional alternatives to incarceration within their jurisdictions. Specifically, 23% of respondents indicated they would like to see additional drug treatment programs and 20% of respondents indicated they would like to see additional mental health treatment programs within their respective jurisdictions.

From the survey results, the MSCCSP created a table of Reported Alternatives to Incarceration, by jurisdiction (see Appendix A). To gain a better understanding of program availability, the

MSCCSP communicated with approximately 60% of the programs identified in the survey responses to determine the program's target population, factors that could disqualify an individual from the program, the program's capacity, and fees associated with the program.

The MSCCSP considered initially the feasibility of incorporating in the sentencing guidelines alternatives to incarceration (other than standard probation) within specific cells of the three sentencing matrices. Ultimately, however, the MSCCSP decided against doing so for reasons that are outlined in the recommendations section of this report. Instead, the MSCCSP identified a simpler approach to support the use of alternatives to incarceration involving the following recommended actions for consideration by the MSCCSP and other state agencies and local entities:

Recommended Actions for the MSCCSP

1. Expand the definition of "corrections options" to include specified sentences with required substance abuse treatment as guidelines-compliant.
2. Educate judges, court staff, and legal practitioners on guidelines-compliant sentences with respect to corrections options.
3. Adopt a policy statement encouraging the use of alternatives to incarceration, where appropriate.
4. Collect additional data on sentences utilizing alternatives to incarceration.

Recommended Actions for Other State Agencies and Local Entities

5. Create a web-based alternatives locator service.
6. Conduct an analysis of available programming for offenders and identify programming gaps.
7. Expand the scope and use of the presentence investigation report.

BACKGROUND

Introduction

During the 2016 Legislative Session, the General Assembly passed the Justice Reinvestment Act (JRA) ([Senate Bill 1005/Ch.515, Sec. 8, 2016](#)). Among other things, the JRA requires the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) to study how more alternatives to incarceration may be included in the sentencing guidelines and to submit a report of the findings and recommendations to the Justice Reinvestment Oversight Board, Governor, and General Assembly by January 1, 2018. In December 2015, the Justice Reinvestment Coordinating Council (JRCC) submitted a final report that provided the framework for the formulation of the JRA. The JRCC final report suggests that judges would need to depart from the sentencing guidelines in order to impose alternatives to incarceration. That statement, which was the premise for the JRA mandate to study alternatives to incarceration, is misleading. As authorized in COMAR 14.22.01.17, sentences to corrections options such as home detention, drug court, Health General Article (HG), § 8-507 commitments, and other residential treatment programs are guidelines compliant, provided that the initial sentence (plus any suspended sentence) falls within or above the applicable guidelines range and the case does not include a crime of violence (as defined under Criminal Law Article (CR), § 14-101), child sexual abuse, or escape. Therefore, judges are able currently to impose a sentence consistent with the sentencing guidelines by utilizing specified alternatives to incarceration. At a minimum, however, this misunderstanding suggests that the guidelines rule regarding corrections options is either not well known by the criminal justice community, not well understood, or perhaps both. The recommendations provided in this report address this specific issue and offer additional recommendations for the MSCCSP and other agencies to consider to support further the use of alternatives to incarceration for appropriate offenders.

History of Corrections Options in Maryland

The MSCCSP and its predecessor, the Maryland Commission on Criminal Sentencing Policy (the “Study Commission”), devoted considerable time and effort to the study of intermediate sanction programs or “*corrections options*” or “*correctional options*” programs (as they were termed in Maryland). The enabling legislation of the Study Commission (Chapter 648, Acts of 1999), defined “*correctional options programs*” as:

A criminal sanction other than traditional probation, traditional parole, or total confinement (see former Article 41, § 18-312(a)(4)).

The MSCCSP and the Study Commission held many meetings, invited numerous guest presenters, and reviewed seemingly countless pages of reports and material regarding corrections options/intermediate sanctions. Given the comprehensiveness of the prior study of corrections options, the MSCCSP considered these prior efforts when formulating the proposed recommended actions included in this current study. Appendix B summarizes the Study Commission's and MSCCSP's prior actions regarding corrections options and alternatives to incarceration.

Identifying Evidence-Based Alternatives

Research on the effectiveness of alternatives to incarceration relative to imprisonment has shown repeatedly that the rate of re-offending following non-custodial sanctions is lower than or similar to the rate of re-offending following custodial sanctions (Villettaz, Gillieron, and Killias, 2015). A recent systematic review of the literature on alternatives to incarceration examined experimental and quasi-experimental studies¹ prepared between 1961 and 2013 comparing custodial sanctions and non-custodial sanctions (Villettaz et al., 2015). Custodial sanctions were defined as placement in a closed residential setting (not the offender's home), such as confinement in prison, jail, boot-camps, and shock incarceration programs, as well as temporary confinement overnight or during weekends in half-way houses. Non-custodial sanctions were defined as sanctions not involving the deprivation of liberty, such as community service, electronic monitoring, fines, probation, and suspended sentences (Villettaz et al., 2015). The systematic review found that, although most comparisons showed that the rate of re-offending after a non-custodial sanction is lower than the rate of re-offending after a custodial sanction, the evaluations involving the most rigorous designs showed no significant difference in the rate of re-offending (Villettaz et al., 2015). Such findings have led to agreement generally that imprisonment is not reducing re-offending relative to community sanctions.

There are a number of resources available to assist policy makers and practitioners with identifying effective alternatives. Two such tools are the National Drug Court Institute's Annals of Research and Knowledge (ARK) and the National Institute of Justice's CrimeSolutions.gov.

¹ Experimental research designs randomly assign participants to either the treatment or the control group. Quasi-experimental research designs do not randomly assign participants to conditions.

The ARK (available at <https://www.ndci.org/resources/the-ark/>) identifies evidence-based and promising programs based on both the offender's risk and need profile and the offender's stage in the criminal justice system. The ARK allows one to specify an individual's risk/need level (high risk/high needs, high risk/low needs, low risk/high needs, or low risk/low needs) and his or her particular stage in the proceedings (pre-arrest, pre-trial, sentencing, community corrections, incarceration, or re-entry) and view detailed information on effective programs matched to that individual (National Association of Drug Court Professionals, 2015). This tool is aimed at ensuring that individuals receive the most effective and cost-efficient programming given their individual risk-needs assessment and their stage in the criminal justice system (National Drug Court Institute, 2017).

The National Institute of Justice's CrimeSolutions.gov (available at <https://www.crimesolutions.gov/>) provides a web-based clearinghouse of programs and practices that target criminal justice, juvenile justice, and crime victim services outcomes and have undergone rigorous evaluation. Evaluations of programs and practices are reviewed, and those reviews are used in turn to rate the programs and practices as effective, promising, or no effects. The site is intended to inform policy makers and practitioners about what works, what does not, and what is promising. CrimeSolutions.gov recommends that the provided information be used by criminal justice practitioners to improve their effectiveness and by policy makers to inform funding decisions (National Institute of Justice, n.d.). As the State of Maryland continues to promote the use of alternatives to incarceration, resources like the ARK and CrimeSolutions.gov that identify evidence-based programs and practices can inform decisions about which alternatives to incarceration to fund and implement.

SUMMARY OF ALTERNATIVES TO INCARCERATION IN OTHER SENTENCING GUIDELINES JURISDICTIONS

In order to address the directive that commissioned this study, it is informative to review how other jurisdictions incorporate alternatives to incarceration within their sentencing guidelines structures. This section summarizes the approaches utilized by select jurisdictions that include alternatives to incarceration in their sentencing guidelines. This review summarizes how jurisdictions with and without guidelines grid systems encourage the use of alternatives.

Jurisdictions including alternatives to incarceration can be categorized as follows: those with grid systems similar to Maryland, those with grid systems more complex than Maryland's, those that codified alternatives to incarceration, and those without grid systems.

Jurisdictions with Grid Systems Similar to Maryland

A handful of jurisdictions, including the Federal Sentencing Guidelines, Arkansas, Kansas, and North Carolina, include alternatives to incarceration within their sentencing grids. These sentencing grids are similar to Maryland's in that they employ a series of two-dimensional grids with one axis representing the offense and the other axis representing the offender. Typically, these jurisdictions include alternatives to incarceration in their sentencing grids by designating alternatives within specific cells. These cells tend to be for less serious offenses and first-time offenders or offenders with little prior criminal history. Examples of specified alternatives include straight probation, probation with community confinement or home detention, suspended sentences with a condition of community corrections, drug treatment court, other substance abuse treatment or mental health treatment, weekend incarceration, work release, and fines.

Jurisdictions with More Complex Grids

Massachusetts and Pennsylvania utilize sentencing guidelines systems that are more complex than those in Maryland. These two jurisdictions employ various "zones" of punishment. For example, Massachusetts provides a "continuum of intermediate sanctions" and identifies four levels of intermediate sanctions, ranging from financial accountability (Level I) to the maximum level of restriction short of incarceration (Level IV). In Massachusetts, intermediate sanctions can include, but are not limited to, any of the following: intensive supervision, community

service, home confinement, day reporting, or restitution (Massachusetts Sentencing Commission, 1998).

Pennsylvania provides five sentencing levels from most to least restrictive. Each sentencing level in Pennsylvania includes some form of alternative to incarceration, including restrictive intermediate punishments (RIP) and restorative sanction programs. RIPs are programs providing strict supervision over the defendant and either housing the defendant full- or part-time, restricting the defendant's movement, and monitoring his/her compliance with required programs, or a combination of these conditions. Restorative sanction programs are "generally used in conjunction with RIPs as the level of supervision is reduced, but may also be used as separate sanctions under any of the non-confinement sentencing alternatives" (Pennsylvania Commission on Sentencing, 2012).

Codified Alternatives to Incarceration

Similar to Maryland, the State of Washington uses a two-dimensional sentencing guidelines grid system based on an offense score and an offender score. Washington's sentencing grids, however, do not include alternatives to incarceration. Rather, the Revised Code of Washington gives the courts authority to impose alternatives to incarceration (WASH. REV. CODE § 9.94A.680). The Revised Code of Washington provides that "(f)or sentences of nonviolent offenders for one year or less, the court shall consider and give priority to available alternatives to total confinement and shall state its reasons in writing on the judgment and sentence form if the alternatives are not used" (WASH. REV. CODE § 9.94A.680(3)). For non-violent or non-sex offenses with a sentence of one year or less and where the court may find that the defendant has a chemical dependency, the defendant may be sentenced to a county-supervised community option (by converting the term of incarceration) (Washington State Caseload Forecast Council, 2016). The community supervision option may include a conversion of one year or less imprisonment to community service or partial confinement to include work release, home detention, or work crew (Washington State Caseload Forecast Council, 2016).

The Revised Code of Washington also allows for the following sentencing alternatives: First Time Offender Waiver (FTOW) (WASH. REV. CODE § 9.94A.650); Parenting Sentencing Alternative (WASH. REV. CODE § 9.94A.655); Drug Offender Sentencing Alternative (DOSA) (WASH. REV. CODE § 9.94A.660); and Special Sex Offender Sentencing Alternative (SSOSA)

(WASH. REV. CODE § 9.94A.670). Under the FTOW, a court may waive the standard sentence and impose a sentence, which may include up to 90 days confinement in a county facility or up to six months of community custody (12 months if the defendant is required to complete a treatment program). The Parenting Sentencing Alternatives allows a court to waive the guidelines sentencing range if the defendant meets certain criteria and has physical custody of a minor child (or is the legal guardian with physical custody of a minor child). The court may impose 12 months community custody with parenting classes, chemical dependency treatment, mental health programs, vocational training, offender change programs, and/or life skills classes. For offenders meeting certain eligibility requirements, DOSAs allow Washington courts to waive the standard sentence range and impose either a prison-based alternative or a residential treatment-based alternative. Finally, SSOSA allows the court to impose the minimum sentence in the standard range or suspend sentences of less than 11 years if the defendant meets certain eligibility requirements and is amenable to treatment (Washington State Caseload Forecast Council, 2016).

States without Grids

Certain states, such as Alabama, Virginia, and Utah, do not use two-dimensional grids in their sentencing guidelines. Instead, each of these states uses a variety of worksheets to determine whether the defendant should be incarcerated, and if so, the length of incarceration or if the defendant should receive a non-prison sentence.

Alabama's Sentencing Standards consist of three sets of worksheets (drug, property, or personal) and each worksheet includes the following two components: an in/out recommendation and, if the defendant receives a prison sentence, a recommended length of sentence. These Sentencing Standards specifically state that they "[e]ncourage the use of probation and community correction programs for supervising appropriate non-violent offenders" (Alabama Sentencing Commission, 2013). However, they do not explicitly mandate specific alternatives to incarceration. The Sentencing Standards list examples of non-prison dispositions, which include, but are not limited to, probation, community corrections, and work release.

The Virginia guidelines provide guidelines forms for fifteen offense categories, each providing specific scoring information based on the offense (Virginia Criminal Sentencing Commission, 2014). Sentencing recommendations vary by worksheet. Generally, the less serious offenses

allow for a “Probation/No Incarceration” sentence. Guidelines preparers must complete a nonviolent risk assessment form for certain offenders and certain crimes. If the offender receives a certain score (or lower), the guidelines recommendation includes both a period of incarceration and an alternative to incarceration option. The risk assessment tool does not recommend any specific type or form of alternative punishment. According to Virginia’s Sentencing Commission’s 2015 report, for eligible nonviolent risk assessment cases, judges sentenced offenders to supervised probation in the vast majority of these cases. Other frequently used sentences included shorter terms of incarceration in jail, fines and restitution, unsupervised probation, and substance abuse programs.

Utah uses a series of risk management forms to “provide an objective analysis of the severity of the offense and the culpability of the offender” (Utah Sentencing Commission, 2016). The forms provide a length of imprisonment as an initial recommendation. Utah’s guidelines provide also additional forms that address risk reduction and are intended to provide “recommendations as to how to weigh, analyze, and incorporate risk reduction in determining an appropriate level of supervision, treatment, and responses to offender behavior.”

INVENTORY OF CURRENT SENTENCING ALTERNATIVES IN MARYLAND

In order to assess how more alternatives to incarceration may be included in Maryland's sentencing guidelines, the MSCCSP created an inventory to identify alternatives to incarceration available to circuit court judges in Maryland on a jurisdiction-by-jurisdiction basis. The inventory was assembled via a survey distributed to circuit court administrative judges, Parole and Probation field supervisors, and local correctional administrators in each of Maryland's 24 jurisdictions.

PRIMARY SURVEY RESULTS

Primary findings from the survey include the following:

- Maryland has a robust offering of alternatives to incarceration, but the availability of programs varies from jurisdiction to jurisdiction.
- There were discrepancies within all jurisdictions where more than one respondent answered.
- There are a number of programs available statewide, including HG, § 8-507 commitments, outpatient drug treatment programs, Drinking Driver Monitor Program, and anger management programs.
- Twenty-three of 24 jurisdictions indicated that a variety of other alternatives to incarceration were available within their jurisdiction, including electronic monitoring, home confinement, work release, community service, mental health treatment programs, and parenting classes.
- Respondents felt generally that drug and alcohol treatment programs were the most effective alternatives to incarceration.
- The majority of respondents (68%) want to see additional alternatives to incarceration within their jurisdictions. Specifically, 23% of respondents indicated they would like to see additional drug treatment programs and 20% of respondents indicated they would like to see additional mental health treatment programs within their respective jurisdictions.

The Inventory

Participants received the survey via email, allowing respondents to complete the survey online. The email contained also a PDF version of the survey with the suggestion that respondents view the survey questions and solicit information from their colleagues before attempting to complete the survey online. The Administrative Office of the Courts (AOC) sent a link to the survey to circuit court administrative judges. President of the Maryland Correctional Administrator's Association, Daniel Lasher, distributed the survey's link to local correctional administrators. The MSCCSP distributed the survey to the Parole and Probation Field Supervisor IIs that oversee all 24 jurisdictions.

Table 1: Respondent's Position

POSITION	TOTAL NUMBER RECEIVED	PERCENTAGE	The intent of the survey was to gain a better understanding of available alternatives to incarceration within each jurisdiction.
Circuit Court administrative judges	17	39%	
Local correctional administrators	13	29%	
Parole and Probation	14	32%	
TOTAL	44	100%	

The survey asked respondents to indicate whether six specific Maryland Problem Solving Courts and 26 specific alternatives to incarceration are available within their jurisdiction. When appropriate, the survey required the respondent to provide follow-up information, such as whether the program was county-monitored or privately-monitored and the program's name. The survey asked further respondents to indicate which programs were the most frequently used with split sentences and probation, which programs they felt were the most effective, the general criteria they believed should be used to identify offenders for alternatives to incarceration, and whether they would like to see additional programming within their jurisdiction.

A potential of 72 responses existed. The MSCCSP received at least one response from each jurisdiction. The total number of responses received was 44. The respondents included 17 circuit court administrative judges, 13 local correctional administrators, and 14 Parole and Probation Field Supervisor IIs (see Table 1). For the majority of the jurisdictions (62.5%), the MSCCSP received more than one response (including five jurisdictions from which the MSCCSP received three responses) (see Table 2).

Table 2: Respondent's Jurisdiction

JURISDICTION	COUNT
Allegany	3
Anne Arundel	2
Baltimore City	2
Baltimore County	3
Calvert	3
Caroline	1
Carroll	2
Cecil	1
Charles	2
Dorchester	1
Frederick	2
Garrett	3
Harford	2
Howard	2
Kent	2
Montgomery	3
Prince George's	1
Queen Anne's	1
Somerset	1
St. Mary's	2
Talbot	1
Washington	2
Wicomico	1
Worcester	1
Total	44

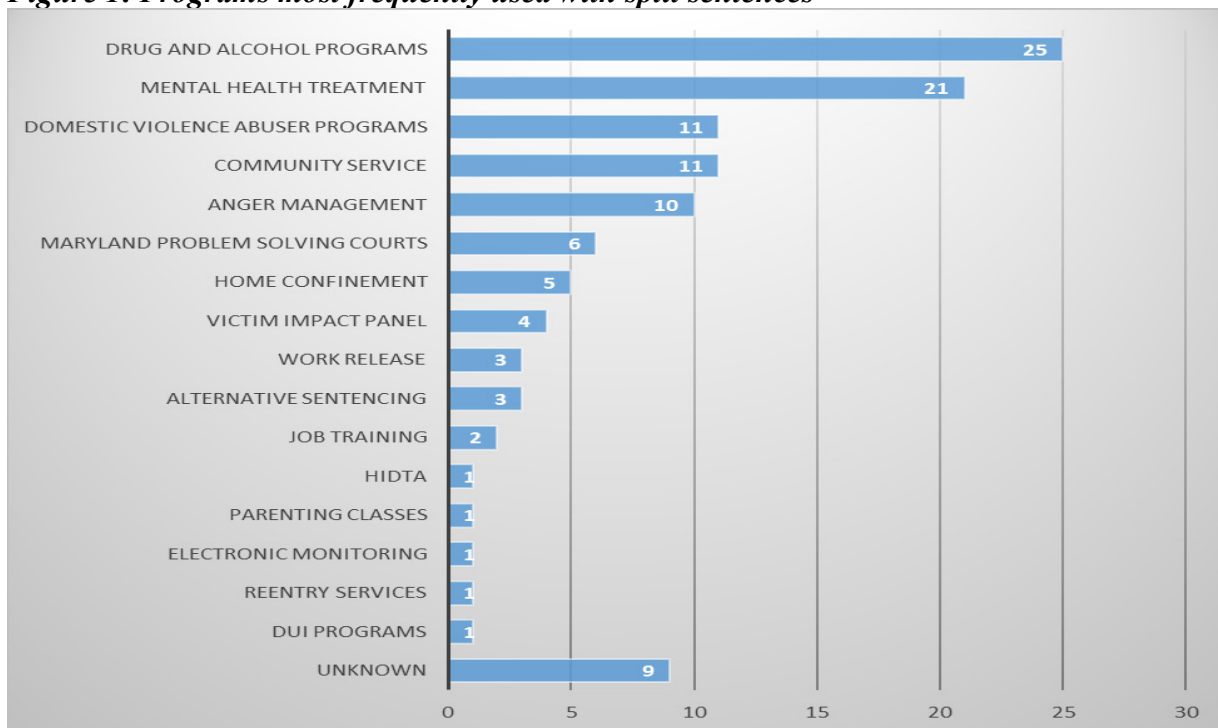
Results

The results of the survey indicate that Maryland has currently a robust offering of alternatives to incarceration, however that availability varies widely from jurisdiction to jurisdiction. As of December 2017, Maryland has Adult Circuit Drug Courts in 13 jurisdictions, Juvenile Drug Courts in five jurisdictions, Family/Dependent Drug Courts in five jurisdictions, DUI/Drug courts in four jurisdictions, Mental Health Circuit Courts in two jurisdictions, and Veterans Courts in two jurisdictions (Office of the Problem Solving Courts, 2017).

Respondents listed Maryland's Problem Solving Courts as the sixth program most frequently used with a split sentence (see Figure 1).

When considering program effectiveness, nine respondents listed Drug Court as the most effective alternative to incarceration and an additional five

respondents listed Maryland's Problem Solving Courts generally.

Figure 1: Programs most frequently used with split sentences

The survey results indicate that there are a number of alternatives to incarceration available statewide. Specifically, survey results indicate that HG, § 8-507 commitments, outpatient drug treatment programs, the Drinking Driver Monitor Program, and anger management programs are available in every jurisdiction. While the survey did not request information on probation, restitution, or fines, these alternatives to incarceration are also available statewide.

The JRA (Chapter 515 of 2016) mandates that the Maryland Department of Health (DOH) place individuals committed under HG, § 8-507 within 21 days. The Maryland Governor's Office of Crime Control and Prevention's (GOCCP) *Substance Use and Mental Health Disorder Gaps and Needs Analysis* (2016), indicated that the State contracts with three treatment providers to provide residential substance abuse treatment services (Gaudenzia, Inc.; New Horizons Health Services; and Jude House, Inc.); the average wait time for placement was 167 days. As of November 2017, however, the DOH is eliminating the contract system and moving to a fee for service system in which any provider meeting certain requirements can accept HG, § 8-507 commitments. As of November 2017, the average wait time for placement was under the JRA mandate of 21 days.

Additionally, electronic monitoring, home confinement, work release programs², community service programs, mental health programs, parenting classes, and domestic violence abuser intervention programs were reported in 23 of the 24 jurisdictions. There were numerous other programs which indicated that they would accept individuals from anywhere in Maryland into their programs (these include inpatient and outpatient drug treatment programs, mental health treatment programs, domestic violence abuser intervention programs, parenting classes, employment training, veterans' services, homeless services, mediation programs, and prostitution prevention programs).³

The survey results indicate further that inpatient drug treatment programs are available in 20 of the 24 jurisdictions, employment training programs are available in 18 of the 24 jurisdictions, services to the homeless are available in 16 of the 24 jurisdictions, and victim offender mediation or victim impact panels are available in 18 of the 24 jurisdictions. Additionally, 17 of the 24 jurisdictions reported additional mediation programs. These mediation programs focused mostly on re-entry mediation. For a full list of reported alternatives to incarceration, see Appendix A.

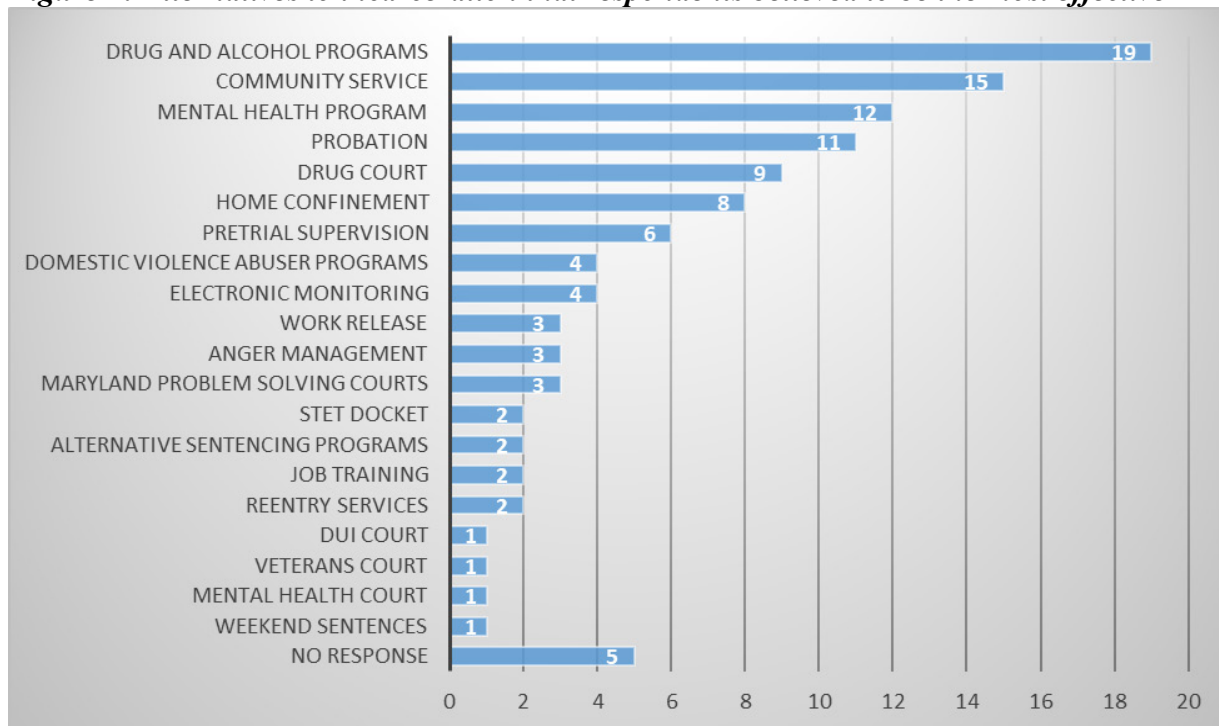
The survey asked respondents to list the five programs used most frequently with a split sentence or probation. As such, most respondents answered with more than one program. Overall, the respondents indicated that the programs used most frequently with split sentences and probation are drug or alcohol treatment programs and mental health treatment programs. Specifically, 25 of the 44 respondents indicated that drug or alcohol treatment programs and 21 of the 44 respondents indicated that mental health treatment programs were the most frequently used programs. The next three most frequently used programs include domestic violence abuser programs (11 of 44), community service programs (11 of 44), and anger management programs (10 of 44). Additionally, nine respondents indicated that this information was unknown in their jurisdictions. See Figure 1 for the complete results.

² Work release is not available currently in Prince George's County; however, HB 1574, 2017 Leg., 437th Sess. (Md 2017) created a task force to study and make recommendations regarding pretrial release, work release, and diversion programs for Prince George's County.

³ Simply because a program will accept individuals from any part of the State does not make this program truly available to all parts of the State. The location of the program, fees associated with the program, and individual program requirements may make these programs inaccessible to many Maryland residents.

The survey also asked respondents to list the top three programs that they felt were most effective. Most respondents answered with more than one program. The top three responses included drug and alcohol programs (19 of 44), community service programs (15 of 44), and mental health treatment programs (12 of 44). Five respondents answered with either “N/A,” “unknown,” or “none” (these are listed as No Response). See Figure 2 for the full range of responses.

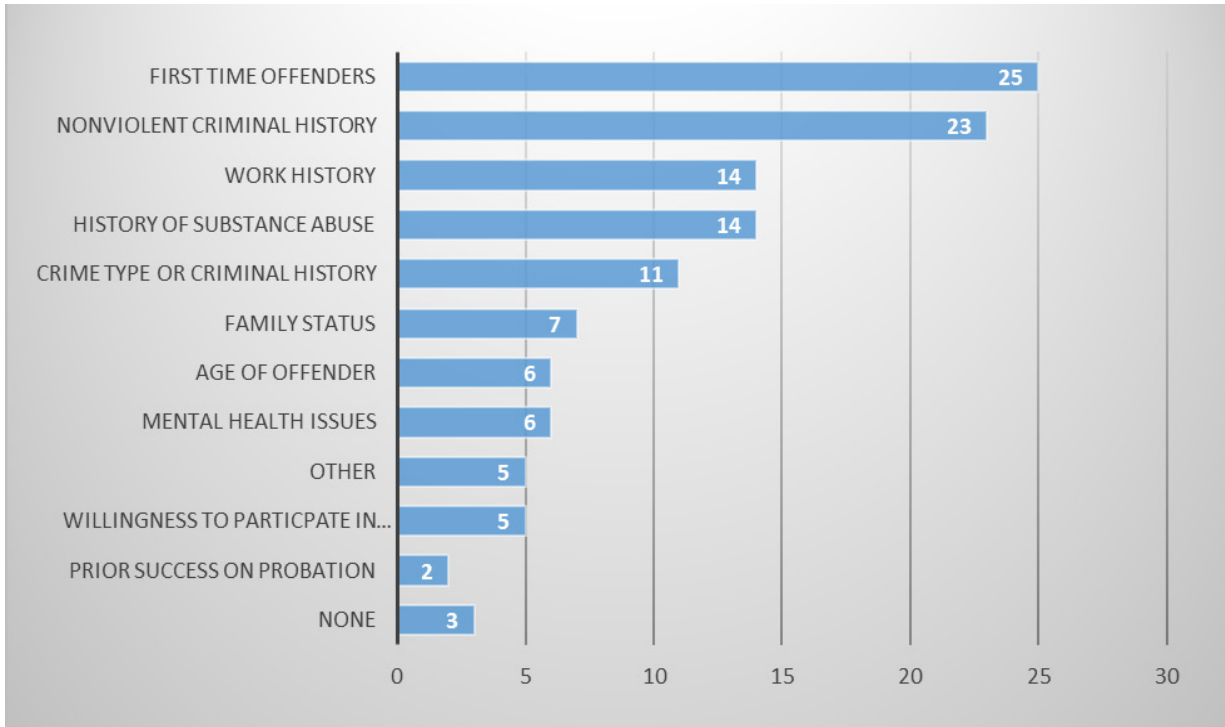
Figure 2: Alternatives to incarceration that respondents believed to be the most effective



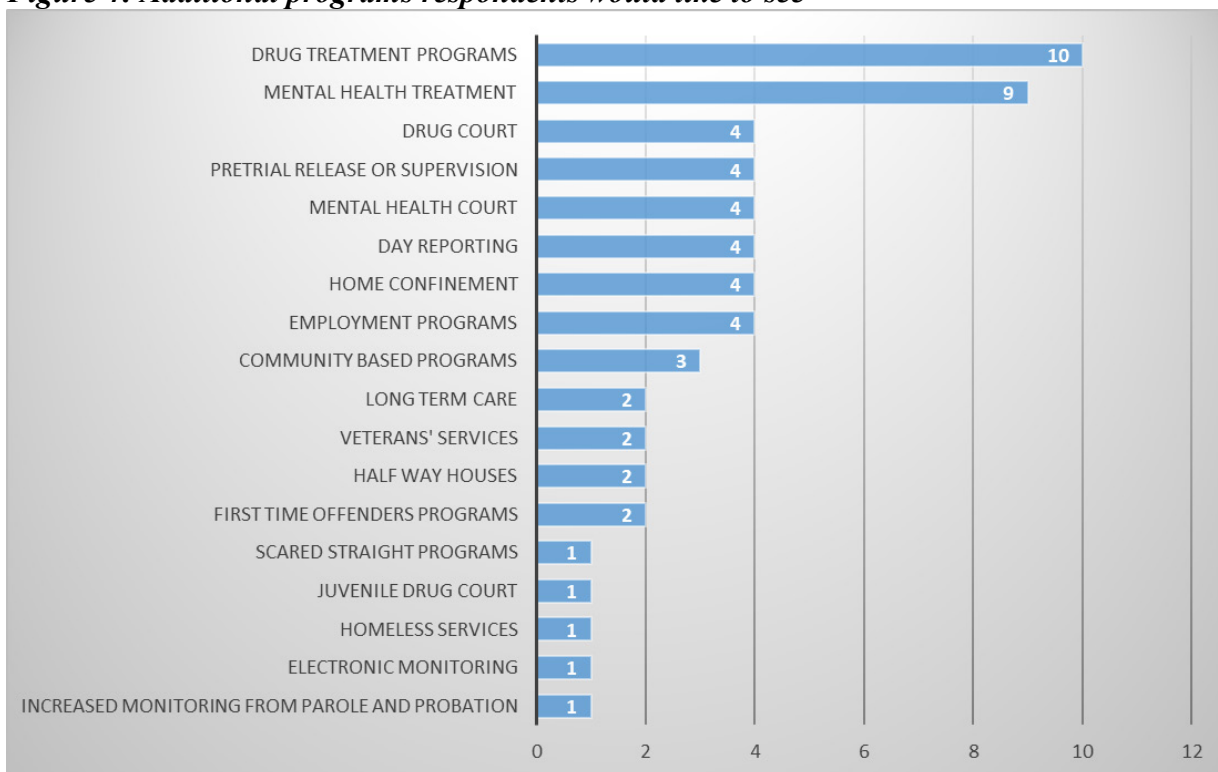
The survey asked further respondents what criteria they believe should be used when identifying offenders for sentencing to an alternative to incarceration. The survey asked respondents not to include criteria for a specific program, but to include offender characteristics that the respondent believes are important when considering an alternative to incarceration. The question provided the following examples: first time offenders, offenders with a history of substance abuse, offenders with a job, and offenders with no history of violence. The majority of respondents indicated that first time offenders, those with a non-violent criminal history, or those with a history of employment should be eligible for alternatives to incarceration. Other frequently cited characteristics include whether the offender had a history of substance abuse, the offender’s general criminal history, and the type of crime the offender committed. Three

respondents answered with either “N/A” or “unknown” (these are listed as None). See Figure 3 for the complete results.

Figure 3: What criteria should be used to identify offenders for sentencing to an alternative to incarceration?



The majority of respondents (68%) indicated that they would like to see additional alternatives to incarceration within their jurisdiction. When asked which additional alternatives to incarceration not in use presently in their jurisdiction they would like to see in place, respondents indicated most often that they would like to see additional drug treatment programs (10 of the 44 responses) and mental health treatment programs (9 of the 44 responses). See Figure 4 for the complete results.

Figure 4: Additional programs respondents would like to see

Finally, it is important to note the substantial discrepancies within the survey. In every jurisdiction with more than one response, there were discrepancies between the responses as to the availability of alternatives to incarceration in their jurisdiction. For example, one respondent would indicate that mental health treatment was not available within the jurisdiction and the other would indicate that mental health treatment was available and provide the program name. These discrepancies indicate that individuals in relevant positions may not always be aware of the alternatives to incarceration available within their jurisdictions or whether specific programs are available to those being sentenced in circuit courts. The MSCCSP believes that this is an important finding itself, and its observation led to Recommendation #5 (see Recommendations).

Program Availability Table

From the survey results, the MSCCSP created a table of Reported Alternatives to Incarceration, by jurisdiction (see Appendix A). As noted previously, there were discrepancies within all jurisdictions where more than one respondent answered. To gain a better understanding of program availability, the MSCCSP spoke with approximately 60% of the programs identified in the survey responses to determine the program's target population, factors that could disqualify an individual from the program, the program's capacity, and fees associated with the program.

The Office of Problem Solving Court’s website was used to determine the availability by jurisdiction of Maryland’s Problem Solving Courts. In other categories, the MSCCSP updated respondents’ answers in a few scenarios. If additional respondents from the same county listed available programs or the MSCCSP spoke with the program representative who either confirmed the availability of the program or denied the availability of the program, the MSCCSP updated responses accordingly.⁴

In many instances, program representatives indicated that the program was available in more than one county or that the program operated in additional locations. There were, however, also many instances, especially in the services to the homeless category, in which program representatives indicated that the program was not deemed an alternative to incarceration or that they were no longer operating the program. The MSCCSP did not seek out actively additional programs. If a program representative made suggestions concerning additional programs or alternatives to incarceration, however, the MSCCSP attempted to follow up with recommended programs.

Additionally, the initial survey asked respondents about the availability of the Office of the Public Defender’s Client Services Program and of day reporting centers. Although there were a number of respondents who listed the Client Services Program as being available in their jurisdiction, the Maryland Government’s website lists this program as being abolished in 2010 (Maryland State Archives, 2017). A number of individuals responded also that day reporting centers were available within their jurisdiction; however, MSCCSP staff identified just one operational day reporting center, in Washington County (Office of Governor Larry Hogan, 2016). If the respondent listed a program under “Additional Programs,” but said the program fit better under a different category, MSCCSP staff categorized the program as the latter.

For many categories, at least one program indicated that they accepted individuals from any part of Maryland. This was especially true for many private drug treatment and mental health facilities. Although this information is important, the MSCCSP determined that the location of the program and the respondents’ indication of program availability should control in the table of Reported Alternatives to Incarceration. Even though a program may accept individuals from any

⁴ When respondents indicated that a program was available, but listed the name as “n/a,” this was treated as if the program was not available.

part of the State, it is not possible or practical always for an individual to attend the program. Thus, the table of Reported Alternatives to Incarceration located in Appendix A indicates when at least one program responded that they accepted individuals statewide; this is not reflected in the “yes/no” for each jurisdiction.

RECOMMENDATIONS

The MSCCSP considered initially the feasibility of incorporating in the sentencing guidelines alternatives to incarceration (other than standard probation) within specific cells of the three sentencing matrices. Ultimately, however, the MSCCSP decided against doing so for four primary reasons. First, the sentencing guidelines provide already a mechanism for judges to utilize guidelines-compliant specified alternatives to incarceration, such as home detention, drug court, HG, § 8-507 commitments, and other residential treatment programs, 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 (as defined under CR, §14-101), child sexual abuse, or escape.⁵ Second, the two-dimensional sentencing guidelines grid system⁶ does not lend itself to an evidence-based approach of matching offenders to effective and promising programming based on the specific risk/needs of individual offenders. Similarly, the guidelines grid system would not be able to account for differing eligibility criteria for specific programs across jurisdictions. Third, the MSCCSP does not have sufficient data to assess descriptively the use and effectiveness of the current wide range of alternatives to incarceration available around the State. Finally, given that the sentencing guidelines are a systematic format to encourage fair and consistent sentence outcomes throughout the State, it is not appropriate for the guidelines to recommend a particular alternative that may be available only to defendants residing in specific jurisdictions or to recommend alternatives with varying levels of program fidelity. Accordingly, the MSCCSP identified a simpler approach to support the use of alternatives to incarceration involving the following recommended actions for consideration by the MSCCSP and other state agencies and local entities.

⁵ A lack of awareness of this mechanism for using guidelines-compliant alternatives to incarceration suggests that the guidelines rule regarding corrections options is either not well known by the criminal justice community, not well understood, or perhaps both. Accordingly, Recommendation #2 from this report offers a proposal to publicize better that judges may impose a guidelines-compliant sentence when they chose to suspend a sentence and impose specified corrections options.

⁶ The recommended sentence range is presented in the matrix grid cell at the intersection of two dimensions: an individual's offender score and offense seriousness category (for drug and property offenses) or offense score (for person offenses).

Recommended Actions for the MSCCSP⁷

- 1. Expand the definition of “corrections options” to include specified sentences with required substance abuse treatment as guidelines-compliant.** Effective October 1, 2017, the MSCCSP expanded the definition of correction options⁸ so that a sentence, with required substance abuse treatment, for the possession, administration, obtainment, etc. of controlled dangerous substances (CDS), outlined currently in CR, § 5-601(c) and pursuant to CR, § 5-601(e)(3), be considered a corrections option program when determining guidelines compliance. This amendment is consistent with specified provisions of the JRA, and it allows judges to impose drug treatment in lieu of any active imprisonment sentence, while remaining compliant with the sentencing guidelines. Similar to previously adopted rules regarding how ABA pleas and corrections options impact guidelines compliance, the October 1 expansion of the corrections options definition was adopted to recognize the State’s interest in promoting the use of alternatives for appropriate offenders, by allowing judges to sentence consistent with the sentencing guidelines when imposing a non-incarceration sentence.

- 2. Educate judges, court staff, and legal practitioners on guidelines-compliant sentences with respect to corrections options.** The MSCCSP should implement a plan to better inform judges, court personnel, prosecutors, and defense attorneys that judges do not have to depart from the guidelines in order to utilize alternatives to incarceration. Judges may impose a guidelines-compliant sentence when they chose to suspend a sentence and impose specified corrections options. The MSCCSP believes that increased awareness regarding this guidelines rule will promote a cultural change that helps to make judges more comfortable imposing corrections options. The MSCCSP staff offers two primary tools for this educational campaign. First, the next release of the Maryland Automated Guidelines System (MAGS; expected for deployment on or about January 1, 2018) will make the corrections options field a mandatory field to complete on the sentence information screen and will also inform automatically users when a sentence is guidelines compliant due to the inclusion of a specified corrections option. As MAGS expands for use in all Maryland jurisdictions by October 1, 2019, the MSCCSP staff

⁷ The MSCCSP adopted the first action effective October 1, 2017, while the remaining actions are recommendations to be considered for adoption.

⁸ See Maryland Sentencing Guidelines Manual (MSGM) 13.7 for an explanation of guidelines compliance with respect to corrections options, and see MSGM 2 for the definition of corrections options.

believes this new feature will serve as a reverse-learning tool whereby judges, court personnel, prosecutors, and defense attorneys become more aware of the rule due to the prominent display of its application in MAGS. Second, the MSCCSP staff will emphasize the rule at future training sessions for these stakeholders.

- 3. Adopt a policy statement encouraging the use of alternatives to incarceration, where appropriate.** The MSCCSP should adopt a policy statement to support the cultural change embodied by the JRA, encouraging the use of alternatives to incarceration, when appropriate. The following language is proposed by the Commission for inclusion in the *Preface* (starting at p. II) of the Maryland Sentencing Guidelines Manual (MSGM):

Policy Statement Encouraging the Use of Alternatives to Incarceration When Appropriate

The MSCCSP encourages judges to consider at sentencing evidence-based or innovative alternatives to incarceration that are appropriate for defendants based on their specific risks and needs. The mandate of Maryland's Justice Reinvestment Act (JRA) (Chapter 515 of 2016) that the Division of Parole and Probation administer risk-needs assessments on individuals under their supervision and develop individualized case plans that take into consideration evidence-based or innovative programs, highlights the value the State places on the use of alternative for suitable offenders.⁹ This approach is also consistent with research on the effectiveness of alternatives to incarceration relative to imprisonment that has overwhelmingly concluded that imprisonment does not reduce re-offending relative to community sanctions (Villettaz, Gillieron, and Killias, 2015). The research findings, when combined with the collateral consequences experienced by incarcerated individuals and their family members (Collateral Consequences Workgroup, 2016), suggest there is a potential public safety and community benefit to limiting exposure to incarceration, especially for offenders who are a low-risk to recidivate.

Therefore, in accordance with the JRA and criminological research, the MSCCSP recommends that judges consider utilizing alternatives to incarceration at sentencing, provided that such alternatives are appropriate based on the defendant's specific risks and needs. For chemically dependent offenders, the MSCCSP encourages treatment in lieu of incarceration.

- 4. Collect additional data on sentences utilizing alternatives to incarceration.** The MSCCSP should expand the sentencing component of MAGS to collect additional details on sentences utilizing alternatives to incarceration. After multiple years of data

⁹ Evidence-based programs and practices are programs proven by scientific research to reliably produce reductions in recidivism (JRA 2016). Innovative programs and practices are programs that do not meet the higher standards of the evidence-based practices, but preliminary research or data indicate they will reduce the likelihood of offender recidivism (JRA 2016).

collection, the MSCCSP would have sufficient data to determine which sentences are most effective in terms of reducing recidivism for specific types of offenders. The more detailed data could be used then to inform future discussion to consider revising the current definition of corrections options to include other effective and promising available alternatives to incarceration. These might include sentences to other problem solving courts (e.g., mental health courts, veterans courts), day reporting centers, and other equivalent evidence-based programs as identified by the Department of Public Safety and Correctional Services (DPSCS) or the DOH.

Recommended Actions for Other State Agencies and Local Entities

5. **Create a web-based alternatives locator service.** The reported discrepancies in available alternatives to incarceration that were identified in the MSCCSP analysis of the survey responses and follow-up research is an important issue in and of itself and should be addressed. The MSCCSP recommends that a state agency be funded to create a web-based locator service (similar to the [Maryland Community Services Locator](#)) to maintain and disseminate information on available alternatives to incarceration by jurisdiction. This locator service should be updated routinely to include information on types of alternatives to incarceration, capacity, eligibility criteria, and evidence of program effectiveness. The MSCCSP believes it would be beneficial if the locator service identified available programs at all stages of the criminal justice system, not just those available at sentencing. The State should consider something similar to the ARK model developed by researchers at the National Association of Drug Court Professionals. The ARK is a systematic justice model that identifies a full continuum of evidence-based alternatives to incarceration that are appropriate for various risk and needs levels at each juncture of the criminal justice system. By creating one easily accessible, well-known resource to maintain this information, judges, prosecutors, and defense attorneys will be able to assess what programs are available in their respective jurisdictions and will be better suited to address offenders' risk and needs at all stages of the criminal justice system.

6. **Conduct an analysis of available programming for offenders and identify programming gaps.** A state agency or independent researcher should be funded to complete a comprehensive analysis of evidence-based programming available for

offenders of various risk and needs levels at various stages of the criminal justice process from arrest through reentry. The analysis should include alternatives that occur prior to sentencing and are, therefore, outside of the scope of the charge to develop and maintain the sentencing guidelines. For example, the State might consider expansion of promising pre-trial diversion services, such as the LEAD (Law Enforcement Assisted Diversion) program, restorative justice programs, and mediation programs, as they may offer the greatest potential combined benefit of reducing recidivism, decreasing criminal justice costs, and providing opportunities for individuals to avoid the collateral consequences that accompany a conviction. Maryland should complete also a statewide gap analysis to identify locations where evidence-based alternatives to incarceration are lacking and then note the gaps in availability in the web-based locator service suggested in Recommendation #5. This analysis would build off the work completed by the GOCCP regarding drug and mental health gaps and needs, as well as the MSCCSP's inventory on alternatives to incarceration, to identify specific geographic areas of the State that are lacking effective and promising programming for each stage of the criminal justice process.

7. **Expand the scope and use of the presentence investigation report.** A multi-agency collaboration should be utilized to reform the structure of the presentence investigation (PSI) report to include a validated risk-needs assessment and expand the use of the PSI report to cases involving mid-level offenders who are considered generally “on the fence” in terms of incarceration. There is compelling evidence of the efficacy of alternatives when eligibility is based on an offender’s risk and needs. A validated risk-needs assessment would help also judges identify defendants who are not suitable for alternatives to incarceration.

APPENDICES

Appendix A: Reported Alternatives to Incarceration¹⁰

<i>Jurisdiction</i>	Adult Circuit Drug Court	Juvenile Drug Court	Family/Dependent Drug Court	DUI/Drug Court	Circuit Court Mental Health Court	Veterans Court	Pretrial Diversion	Electronic Monitoring	Home Confinement	Work Release	Day Reporting
<i>Allegany</i>	No	No	No	No	No	No	No	Yes	Yes	Yes	No
<i>Anne Arundel</i>	Yes	No	No	Yes	No	No	Yes	Yes	Yes	Yes	No
<i>Baltimore City</i>	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No
<i>Baltimore Co.</i>	No	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	No
<i>Calvert</i>	Yes	No	No	No	No	No	Yes ¹¹	Yes	Yes	Yes	No
<i>Caroline</i>	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No
<i>Carroll</i>	Yes	No	No	No	No	No	Yes	Yes	Yes	Yes	No
<i>Cecil</i>	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No
<i>Charles</i>	No	No	Yes	No	No	No	No	Yes	Yes	Yes	No
<i>Dorchester</i>	No	No	No	No	No	No	No	Yes	Yes	Yes	No
<i>Frederick</i>	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No
<i>Garrett</i>	No	No	No	No	No	No	No	Yes	Yes	Yes	No
<i>Harford</i>	No	No	Yes	Yes	No	No	No	Yes	Yes	Yes	No
<i>Howard</i>	No	No	No	Yes	No	No	No	No	No	Yes	No
<i>Kent</i>	No	No	No	No	No	No	No	Yes	Yes	Yes	No
<i>Montgomery</i>	Yes	No	No	No	Yes	No	Yes	Yes	Yes	Yes	No
<i>Prince George's</i>	Yes	Yes	No	No	No	Yes	No	Yes	Yes	No	No
<i>Queen Anne's</i>	No	No	No	No	No	No	No	Yes	Yes	Yes	No
<i>St. Mary's</i>	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No
<i>Somerset</i>	No	No	No	No	No	No	No	Yes	Yes	Yes	No
<i>Talbot</i>	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No
<i>Washington</i>	No	Yes	No	No	No	No	Yes	Yes	Yes	Yes	Yes
<i>Wicomico</i>	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No
<i>Worcester</i>	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	No
Total	13	5	5	4	2	2	9	23	23	23	1

¹⁰ The Office of Problem Solving Court’s website was used to determine the availability by jurisdiction of Maryland’s Problem Solving Courts. In other categories, the MSCCSP updated respondents’ answers in a few scenarios. If additional respondents from the same county listed available programs or the MSCCSP spoke with the program representative who either confirmed the availability of the program or denied the availability of the program, the MSCCSP updated responses accordingly.

¹¹ Operated by the District Court State’s Attorney’s Office.

<i>Jurisdiction</i>	HIDTA ¹²	HG, § 8-507	Inpatient Drug Treatment ¹³	Outpatient Drug Treatment ¹²	TASC	DDMP
<i>Allegany</i>	No	Yes	Yes	Yes	No	Yes
<i>Anne Arundel</i>	No	Yes	Yes	Yes	No	Yes
<i>Baltimore City</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>Baltimore Co.</i>	No	Yes	Yes	Yes	Yes	Yes
<i>Calvert</i>	No	Yes	Yes	Yes	No	Yes
<i>Caroline</i>	No	Yes	No	Yes	No	Yes
<i>Carroll</i>	No	Yes	Yes	Yes	No	Yes
<i>Cecil</i>	Yes	Yes	Yes	Yes	No	Yes
<i>Charles</i>	No	Yes	Yes	Yes	No	Yes
<i>Dorchester</i>	No	Yes	Yes	Yes	No	Yes
<i>Frederick</i>	No	Yes	Yes	Yes	No	Yes
<i>Garrett</i>	No	Yes	Yes	Yes	No	Yes
<i>Harford</i>	Yes	Yes	No	Yes	No	Yes
<i>Howard</i>	No	Yes	Yes	Yes	No	Yes
<i>Kent</i>	No	Yes	Yes	Yes	No	Yes
<i>Montgomery</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>Prince George's</i>	No	Yes	Yes	Yes	No	Yes
<i>Queen Anne's</i>	No	Yes	Yes	Yes	No	Yes
<i>St. Mary's</i>	No	Yes	Yes	Yes	No	Yes
<i>Somerset</i>	No	Yes	No	Yes	No	Yes
<i>Talbot</i>	No	Yes	No	Yes	No	Yes
<i>Washington</i>	Yes	Yes	Yes	Yes	No	Yes
<i>Wicomico</i>	No	Yes	Yes	Yes	No	Yes
<i>Worcester</i>	No	Yes	Yes	Yes	No	Yes
Total	5	24	20	24	3	24

¹² Where respondents' answers conflicted, the answers are based on Washington/Baltimore HIDTA regions. There are 13 HIDTA regions in Maryland (Anne Arundel, Baltimore City, Baltimore County, Carroll, Cecil, Charles, Frederick, Harford, Howard, Montgomery, Prince George's, Washington, and Wicomico) (Chapman, Colder, and Carr, 2017). However, being a HIDTA region in itself does not guarantee an available alternative to incarceration.

¹³ At least one program indicated that they would accept individuals from any part of Maryland.

<i>Jurisdiction</i>	Community Service	Mental Health Program ¹²	DV/Abuser Program ¹²	Anger Management ¹²	Parenting Classes ¹²	Employment Training ¹²	Veterans' Services ¹²	Homeless Services ¹²
<i>Allegany</i>	Yes	Yes	Yes	Yes	Yes	No	No	No
<i>Anne Arundel</i>	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes ¹⁴
<i>Baltimore City</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
<i>Baltimore Co.</i>	Yes	Yes ¹⁵	Yes	Yes	Yes	Yes	Yes	No
<i>Calvert</i>	Yes	Yes	Yes	Yes	Yes	Yes ¹⁶	No	Yes
<i>Caroline</i>	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
<i>Carroll</i>	Yes	Yes	Yes	Yes	Yes	Yes	No	No
<i>Cecil</i>	Yes	Yes	Yes	Yes	Yes	No	Yes	No
<i>Charles</i>	Yes	No	Yes	Yes	Yes	Yes	No	Yes ¹³
<i>Dorchester</i>	No	Yes	Yes	Yes	Yes	Yes	No	Yes
<i>Frederick</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Garrett</i>	Yes	Yes	Yes	Yes	Yes	Yes	No	No
<i>Harford</i>	Yes	Yes	Yes	Yes	Yes	Yes ¹⁷	BD ¹⁸	Yes
<i>Howard</i>	Yes	Yes	Yes	Yes	Yes	No	No	No
<i>Kent</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Montgomery</i>	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
<i>Prince George's</i>	Yes	Yes	Yes	Yes	Yes	No	No	Yes
<i>Queen Anne's</i>	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
<i>St. Mary's</i>	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
<i>Somerset</i>	Yes	Yes	Yes	Yes	Yes	Yes	No	No
<i>Talbot</i>	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
<i>Washington</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Wicomico</i>	Yes	Yes	No	Yes	No	Yes	No	Yes
<i>Worcester</i>	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Total	23	23	23	24	23	18	8	16

¹⁴ For individuals in psychiatric crisis.

¹⁵ Respondents listed only one program for this category, and it is only available to homeless individuals.

¹⁶ Programs for individuals with disabilities.

¹⁷ For individuals with the most significant disabilities.

¹⁸ Per the survey respondent, this program is being developed.

<i>Jurisdiction</i>	Victim Offender Mediation	Additional Mediation ¹¹	Restorative Justice Programs	First Offender Programs	Prostitution Prevention ¹¹	Shoplifter Alternative Programs	Additional Programs ¹¹
<i>Allegany</i>	No	No	No	No	No	No	No
<i>Anne Arundel</i>	No	No	No	No	No	No	Yes
<i>Baltimore City</i>	Yes	Yes	Yes	Yes	TBD ¹⁹	No	No
<i>Baltimore Co.</i>	Yes	Yes	No	Yes	No	No	No
<i>Calvert</i>	Yes	Yes	No	No	No	No	No
<i>Caroline</i>	Yes	Yes	No	No	No	No	No
<i>Carroll</i>	Yes	Yes	No	Yes	No	No	Yes
<i>Cecil</i>	Yes	Yes	No	No	No	No	No
<i>Charles</i>	No	Yes	No	No	No	No	No
<i>Dorchester</i>	No	No	No	No	No	No	No
<i>Frederick</i>	Yes	No	No	No	No	No	No
<i>Garrett</i>	No	No	No	No	No	No	No
<i>Harford</i>	Yes	Yes	No	No	No	No	Yes
<i>Howard</i>	Yes	Yes	No	No	No	No	No
<i>Kent</i>	Yes	Yes	No	Yes	No	No	No
<i>Montgomery</i>	Yes	Yes	Yes	Yes	No	No	Yes
<i>Prince George's</i> ²⁰	Yes	No	No	Yes	Yes	No	No
<i>Queen Anne's</i>	Yes	Yes	No	No	No	No	No
<i>St. Mary's</i>	Yes	Yes	No	No	No	No	Yes
<i>Somerset</i>	No	Yes	No	No	No	No	No
<i>Talbot</i>	Yes	No	No	No	No	No	No
<i>Washington</i>	Yes	Yes	No	No	No	No	No
<i>Wicomico</i>	Yes	Yes	No	Yes	No	No	No
<i>Worcester</i>	Yes	Yes	No	No	No	No	No
Total	18	17	2	7	2	0	5

¹⁹ The location of the program is in the process of moving.

²⁰ Prince George's County has many programs available only in District Court. As Maryland's sentencing guidelines only apply to cases in Maryland circuit courts, these programs are reported here as not available.

Appendix B: History of Corrections Options in Maryland

The MSCCSP and its predecessor, the Maryland Commission on Criminal Sentencing Policy (the “Study Commission”) devoted considerable time and effort to the study of intermediate sanction programs, or “*corrections options*,” or “*correctional options*” programs (as they were called in Maryland). The enabling legislation of the Study Commission, defined “*correctional options programs*” as:

A criminal sanction other than traditional probation, traditional parole, or total confinement” (see former Article 41, § 18-312(a)(4)).

The MSCCSP and the Study Commission held many meetings, invited numerous guest presenters, and reviewed countless pages of reports and material regarding corrections options/intermediate sanctions. An abbreviated review of the Study Commission and MSCCSP efforts and discussions regarding corrections options follows.

Study Commission Efforts 1996-1998

1996

- The Study Commission issued an Interim Report that included a consensus statement indicating correctional options should be available for non-violent offenders to use more efficiently public funds and adequately protect public safety.

1997

- The Study Commission considered whether to identify specific cells on the drug and property matrices that would be discretionary zones allowing a judge to sentence an individual to either an alternative to incarceration or an incarceration term.

1998

- The Study Commission recognized a need to identify and divert appropriate individuals to a correctional options program.²¹ The Study Commission considered the creation of a Correctional Options Authority (COA) under the auspices of the DPSCS to administer corrections options programs. The Study Commission issued its [Final Report](#), which included a chapter entitled “Corrections Options between Probation and Prison.” The report recommends that Maryland shift from a back-end approach used in the COP

²¹ In 1990, Congress authorized funding for a Correctional Options Program to encourage states to pursue the development and implementation of alternatives to incarceration programs for select offenders whose addiction to controlled and dangerous substances precipitates their criminal behavior and who are not public safety risks. The State responded to a federal grant solicitation and was one of four states selected to receive federal funding in November 1992 to develop and implement an alternative to incarceration program for non-violent, chemically dependent offenders. In turn, DPSCS established the Correctional Options Program (COP) as a strictly back-end program for parolees limited geographically to “mainly serve the urban corridor of counties in and around Washington, D.C. and Baltimore City” (Study Commission Final Report, p. 50). Representatives of DPSCS explained the COP as “a group of state-run intermediate sanctions programs.” These programs included prison boot camp, regimented offender treatment center, home detention, day reporting, intensive supervision, and standard supervision (Study Commission Final Report, p. 48). The Study Commission recommendation to make greater use of correctional options in lieu of incarceration was based on the belief the State should expand the COP to become a statewide up-front program, using direct sentencing to a State public entity provided that the offender met predetermined criteria of eligibility. The expansion of the COP never came to fruition and it stopped operating altogether in fiscal year 2007.

(described in footnote 1) to a front-end program to occur at judicial sentencing managed by a COA.

- The Study Commission Final Report defined *corrections options* programs as follows:

[i]ntermediate sanction programs are also called intermediate punishments or corrections options programs (as they are called in Maryland). Corrections options programs fall between the traditional sentencing alternatives of either probation or prison. They target offenders for intensive probation supervision, electronic monitoring, house arrest, boot camp prison programs, or community service programs.

Current State of Corrections Options in Maryland

MSCCSP 1999 to Present

1999

- [HB 602](#) (1999) created the MSCCSP. Corrections options are specifically addressed in the MSCCSP's governing legislation under Criminal Procedure Article, §§ 6-201 to 6-214. Specifically, various sections of the MSCCSP governing legislation instruct:

§ 6-202. Statement of Intent.

(5) the priority for the capacity and use of correctional facilities should be the confinement of violent and career criminals; and

(6) sentencing judges in the State should be able to impose the most appropriate criminal penalties, including corrections options programs for appropriate criminals.

§ 6-208. Sentencing guidelines.

(a) (1) The Commission shall adopt sentencing guidelines that the Commission may change.

(2) The sentencing guidelines shall include sentencing guidelines for ordinary sentences and sentencing guidelines for corrections options.

(b) The sentencing guidelines for ordinary sentences shall call for sentences within the limits set by law

(3) (c) The sentencing guidelines for corrections options shall be designed to identify defendants qualified for corrections options programs.

§ 6-209. Annual report.

(b) (2) The Commission shall consider a sentence to a corrections options program to be within the sentencing guidelines if the sentence falls within a corrections options zone shown on the matrix.

- Interestingly, the governing legislation of the Sentencing Commission did not define the term corrections options, nor is it defined in any statute.²² It seems clear that the

²² A search of judicial opinions available on Westlaw revealed that the term "*corrections options*" appears in only one case (*Gatewood v. State*, 388 Md. 526, 880 A.2d 322 (2005)), which does not define it. A search of the Maryland Rules reveals that the term does not appear there. Other than the Sentencing Commission's own regulations (COMAR 14.22.01.00 to 14.22.02.02), no regulation in COMAR uses the term corrections options, but

governing legislation directing the MSCCSP to adopt statewide sentencing guidelines designed to identify defendants suitable for corrections options programs was written under the assumption that a “Corrections Options Authority” would be established, a statewide system of corrections options (i.e., alternatives that fall between traditional probation and incarceration) would be created, and then the MSCCSP would develop eligibility criteria and identify specific cells on the drug and property matrices that would include these “*corrections options*.” For reasons outlined below, the COA and the corresponding statewide system of corrections options were never established.

2000

- The Correction Options Subcommittee of the MSCCSP presented a draft proposal for creation of a COA. The proposal offered that, under judicial discretion, offenders sentenced traditionally to a period of 18 to 36 months could be sentenced to the COA. A DOC caseworker at the local facility would conduct the assessment. Local planning councils would develop criteria for local participation. The COA would act as a small parole commission, but local participation would ensure that the conditions of the offender’s release would be consistent with local values.
- The MSCCSP was in favor generally of corrections options in the abstract, but there was no consensus on how to proceed. The minutes from the various meetings indicate there was much debate, without clear resolution, regarding:
 - Legislative authorization: Would it be necessary to modify legislation to authorize judges to sentence to corrections options as a condition of probation or immediate parole?
 - Due process concerns: Would the COA have authority to impose sanctions, including incarceration? There was concern regarding how to handle corrections options program participant violations. For example, would a violation require going back to court or could a Parole and Probation agent violate a participant?
 - Lack of support at the correctional administrator/county level: (Then) Director of the Prince George’s Department of Corrections indicated that there was no enthusiasm among state and county correctional administrators for a COA. There was concern regarding how the State and local partnership would work to address funding and efficiency issues. The MSCCSP proposed a pilot program for the COA in two jurisdictions, but no volunteers accepted the offer.
 - Confusion over respective roles by different state and county agencies: Different parties were unsure of their responsibilities. The DPSCS thought that it would function as a parole authority; the State DOC thought that the Parole Commission would be in charge of the COA; and, the Parole Commission thought it had no role in the COA. Additionally, (then) MSCCSP Chair, Judge Andrew Sonner, referring to the Commission’s enabling legislation, interpreted the statute to mean that the Commission would develop sentencing guidelines to determine who is eligible for the

three regulations from the Division of Correction (DOC) use the term correctional options (COMAR 12.02.25.01, 12.02.25.02, 12.12.30.04). The DOC’s regulation 12.02.25.01 defines “Correctional options program” as “a graduated series of sanctions, treatment, and other program assistance focusing on nonviolent offenders.”

corrections options program, not to create and develop the entire corrections options program.

- Screening and risk assessment: There were questions regarding who would be responsible for conducting the risk assessment and at what point in the process (before or after the judge sentences an offender to the COA). Additionally, there were questions about what criteria would be utilized to determine eligibility for the COA.
- SB 766 (2000) (failed to pass) would have established a correction options pilot program in four counties and created a statewide COA. The COA would work with local community sentencing planning councils to implement corrections options as alternatives to probation and incarceration; coordinate the placement and supervision of offenders in corrections options programs; recommend to courts options for certain offenders; and, identify local resources and service providers available to serve in corrections options programs. The fiscal note for SB 766 indicated there was some expectation that the COA could lead to some indeterminate cost savings, but one of the counties identified for the pilot program expressed fear that the program would lead to substantial new costs to the county.
- (Then) DPSCS Secretary urged the MSCCSP to keep the discussion alive, but defer any further program proposal. Funding for front-end corrections options at the local level and at DPSCS was a major concern. He stated that the main priorities of DPSCS included systems development to improve case management and major improvements to the Division of Parole and Probation.
- Reading between the lines, it seems that there were too many unresolved issues regarding the development of the COA, especially with respect to the MSCCSP's role (help develop programs or establish guidelines to identify suitable participants for programs after they are established), program availability, who would administer corrections options, and concerns from the State and local jurisdictions about insufficient resources for operation of additional programs.

2001

- [Senate Bill 91](#) (enacted at Chapter 356/2001) authorized any court in the State to order “custodial confinement” as a condition of a suspended sentence or probation. Criminal Procedure Article, § 6-219 (formerly Article 27, § 639) indicates:
 - (a) Custodial Confinement means:
 - (i) home detention;
 - (ii) a corrections options program established under law²³ which requires the individual to participate in home detention, inpatient treatment, or other similar program involving terms and conditions that constitute the equivalent of confinement; or
 - (iii) inpatient drug or alcohol treatment.
- In late 2001, the MSCCSP adopted a definition of corrections options consistent with the definition of custodial confinement provided in SB 91 (2001). The MSCCSP amended

²³ The reference to “under law” was not defined clearly. The only reference to this law in all of the documents searched was a memo from the Legislative Committee which stated that, “With regard to House Bill 392, the Legislative Committee queried to which ‘law’ reference is being made with regard to corrections options programs ‘established under law’ ... noting that the language can be interpreted to mean a Division of Correction Program as well as any type of program requiring any federal, state, or local licensure.”

also the sentencing guidelines compliance calculation rules so that sentences to corrections options programs based on this new definition are deemed compliant, provided that the initial sentence (plus any suspended sentence) falls within or above the applicable guidelines range and the case does not include a crime of violence, child sexual abuse, or escape. At a subsequent meeting, the MSCCSP added sentences to drug courts under the definition of corrections options, making these types of sentences also compliant with the guidelines. Finally, the MSCCSP adopted the policy that sentences pursuant to an ABA plea agreement are guidelines-compliant. This was done to acknowledge that ABA pleas reflect the consensus of the local view of an appropriate sentence within each specific community. The MSCCSP adopted these new compliance policies under the rationale that they allow the court to impose a guidelines-compliant sentence that considers the individual needs of the offender, such as substance abuse treatment, while reflecting also the local culture regarding the appropriate use of non-incarceration sentences.

2005 to 2006

- MSCCSP staff conducted a corrections options inventory and compiled a database describing the resources available in each county. The project used a broad definition of correctional options to include all possible alternatives to confinement.
- The 2006 summary [report](#) illustrated that there is greater parity in alternatives available by jurisdiction as compared to when the Study Commission first identified available options in 1999, with all counties in 2006 having some of the same types of alternatives. Additionally, there is a greater variety of alternatives to choose from, including expanding availability of drug courts.
- The Guidelines Subcommittee of the MSCCSP recommended the definition of corrections options in COMAR remain unchanged, and therefore any program established by the DOC that also met the MSCCSP's criteria would then be included under the MSCCSP definition of corrections options (September 2006).

2007 to 2009

- The MSCCSP created a Subcommittee on Sentencing Drug Offenders to address, among other things, corrections options.
- The Subcommittee on Sentencing Drug Offenders distributed a survey to judges throughout the State to inventory the current availability of alternatives to incarceration. A November 2009 [report](#) summarized the results of the latest inventory.
- The Chair of the Subcommittee on Sentencing Drug Offenders, Delegate Curtis Anderson, reported in December 2009 that the Subcommittee recommends the MSCCSP undertake a campaign to raise awareness of what programs are defined as corrections options and how the utilization of these programs affects the calculation of guidelines compliance. The MSCCSP adopted the recommendation and agreed to distribute a *Guidelines E-News* to describe corrections options and publicize how they are consistent with the sentencing guidelines.

2016 to 2017

- At the September 20, 2016 meeting, the MSCCSP voted to expand the definition of *correction options* so that a sentence, with required substance abuse treatment, for the possession, administration, obtainment, etc. of controlled dangerous substances (CDS),

currently outlined in CR, § 5-601(c) and pursuant to CR, § 5-601(e)(3), be considered a corrections option program when determining guidelines compliance. This amendment is consistent with specified provisions of the JRA, allowing judges to impose drug treatment in lieu of any active imprisonment sentence, while remaining compliant with the sentencing guidelines. This new rule went into effect October 1, 2017.

- Similar to previously adopted rules regarding how ABA pleas and corrections options impact guidelines compliance, the October 1 expansion of the corrections options definition was adopted to recognize the State's interest in promoting the use of alternatives such as drug treatment for appropriate offenders, by allowing judges to sentence consistent with the sentence guidelines while imposing a non-incarceration sentence.

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