

## CHAPTER II

# Overview of Sentencing Practices in the District of Columbia 1996 through 2005

Beginning with its 1999 Annual Report, the Commission has reported on sentencing practices in Superior Court, including any trends or patterns that may have emerged since the previous report. This chapter continues that practice. As will be shown in more detail in *Chapter IV*, there do not appear to be any significant changes in sentencing patterns that can be attributed to the introduction of sentencing guidelines in 2004, although the guidelines do appear to be reducing unexplained variations in sentencing, as was their intent. Because we have less than two years of guideline sentences, this conclusion must be regarded as preliminary, but it is heartening.

Historical sentencing rules and practice have not been static over the course of

the past decade. Prison sentences, for example, underwent a significant change in August of 2000, when determinate sentencing went into effect and parole was eliminated.<sup>1</sup> When looking at the period from 1996 through 2005, “old law” indeterminate sentences do not correlate perfectly with “new law” determinate sentences imposed during the same time frame. For purposes of this report, we have used the *minimum* term of “old law” sentences to equate with “new law” determinate sentences, recognizing that the minimum term of an indeterminate sentence is merely a proxy for the actual prison term the offender was required to serve.<sup>2</sup> In other words, if an indeterminate sentence was three to nine years, we used three years.

<sup>1</sup> Under the “old law” system, judges imposed a minimum and a maximum term of imprisonment. An inmate is first eligible for parole after the completion of the minimum term and, if not paroled earlier, must be released after the completion of the maximum term (less any “good time credits” that may reduce the term). Between the minimum and maximum term, the U.S. Parole Commission (formerly the D.C. Parole Board) determines the point at which the inmate is actually released. From the time an inmate is released until the expiration of the maximum prison term, the inmate is on parole and may be returned to prison under the original sentence if he or she violates parole. Under the “new law,” judges impose a fixed term of imprisonment. The inmate must serve not less than 85% of that term and is then released to supervised release, generally for a three or five year period. There is no parole. If supervised release is later revoked, the inmate must serve an additional revocation term, the length of which is determined by the seriousness of the original conviction and the nature of the violation. The new law applies to offenses committed on or after August 5, 2000. Because of the time lag between the offense date and the sentence date, “old law” sentences were dominant in 2000 and well into 2001 (2002 Annual Report, p. 54 ff).

<sup>2</sup> In constructing the guidelines using historical sentencing data, the Commission similarly relied on the minimum term of “old law” sentences, because the actual sentence each defendant served varied from case to case and could not be reliably retrieved from available data. This may have had the unintended effect of skewing the guidelines downward in some areas to the extent that judges imposing indeterminate sentences may have expected and intended defendants to serve longer than the minimum term before release on parole.



### Rates of Incarceration and Probation January 1996 – December 2005

This chapter provides information on 22,312 old and new law cases between January 1996 and December 2005.<sup>3</sup> *Table 2-1* describes the type of felony sentence imposed each year since 1996.<sup>4</sup> The overwhelming majority of sentences fall into one of three categories: prison-only, probation-only,<sup>5</sup> and split sentences, consisting of a period of prison followed by a period of probation.<sup>6</sup> In 1996, 72% of felony defendants were sentenced to

some period of incarceration under the old law. The incarceration rate steadily declined until 2000, when 53.5% of felony defendants were sentenced to some period of incarceration. This significant drop in the rate of incarceration between 1996 and 2000 cannot be attributed to the change from indeterminate to determinate sentencing, which did not occur until late in 2000, or to the sentencing guidelines, which did not go into effect until 2004. Since 2000, the incarceration rate has fluctuated between 54% (2003) and 64% (2002), and stood at 63% in 2005.

**Table 2-1.** Number and Percentage of Type of Sentences Imposed on Defendants Sentenced by Year

Year	Total sentenced	Incarceration	Probation	Other
1996	1634	1179 (72%)	426 (26%)	29 (2%)
1997	1777	1233 (70%)	522 (29%)	22 (1%)
1998	1972	1347 (68%)	603 (31%)	22 (1%)
1999	2129	1308 (61%)	806 (38%)	15 (1%)
2000	2274	1214 (53.5%)	1052 (46%)	8 (.5%)
2001	2424	1415 (58%)	1009 (42%)	2 (.2%)
2002	2240	1423 (64%)	804 (36%)	13 (.6%)
2003	2649	1432 (54%)	1199 (45%)	18 (1%)
2004	2674	1529 (57%)	1145 (43%)	0 (0%)
2005	2553	1609 (63%)	938 (37%)	6 (.3%)

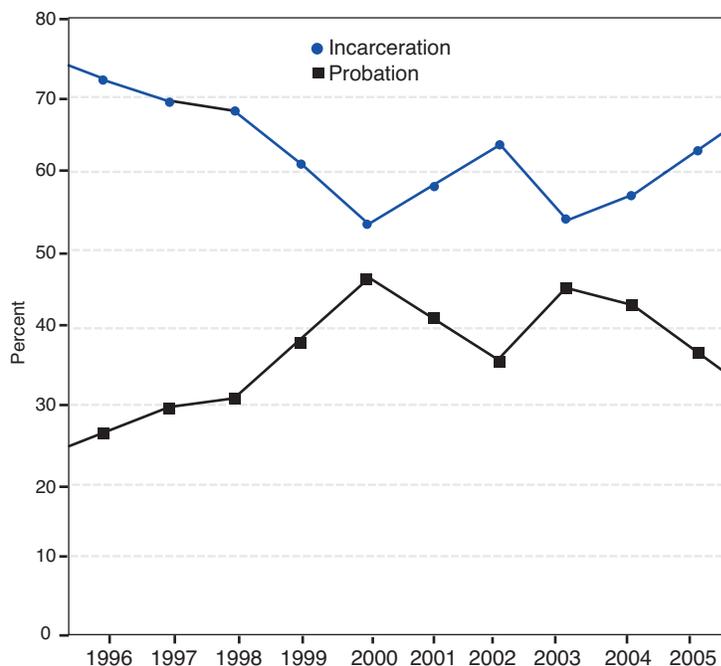
<sup>3</sup>The Superior Court introduced a new information system, Integrated Justice Information System (IJIS), in January 2006. The last full data set received from the Court before the changeover to the new system ends in December of 2005.

<sup>4</sup>“Other” sentences in Table 2-1 include fines or restitution, not combined with a period of probation or confinement.

<sup>5</sup>In order to impose a probation-only sentence, the judge must impose a term of imprisonment, suspend the execution of all of it, and place the defendant on probation. If the defendant fails to abide by the conditions of probation, the judge can revoke probation and require the defendant to serve the suspended prison sentence. Probation sentences are reported in the probation column, although some percentage of those resulted in a period of incarceration following revocation of probation. It is important to note an Erratum. The probation values for 2003 and 2004 were misreported in the 2005 Annual Report. The error occurred because probation sentences that were later revoked were listed incorrectly in the incarceration column, thereby inflating the incarceration figure for those years and understating the number of probation cases in which the initial sentence imposed was suspended and the defendant was placed on probation.

<sup>6</sup>In order to impose a “split sentence,” the judge must impose a term of imprisonment, suspend part of it, and impose a term of probation to follow release from prison. As with probation-only sentences, if the defendant fails to abide by the conditions of probation, the judge can revoke probation and require the defendant to serve the remainder (suspended portion) of the original prison term. As we will discuss in Chapter III, there are “short split” sentences, where the amount of time to be served initially is 6 months or less, and “long splits” where, in the guideline system, the amount of time to be served initially must fall within the prison range. Table 1-1 places all split sentences in the incarceration column, although short split sentences could just as easily be viewed as probation cases, particularly where the initial time to serve can be as short as thirty days, or even shorter. Indeed, in other jurisdictions, sentences of this type are sometimes referred to as “shock probation.”

**Figure 2-1** Percentages of Sentence Types Imposed (Old and New Law) on Felony Defendants Sentenced from January 1996 through December 2005, by Type of Sentence Imposed (N=22,312)



The number of felony sentences has fluctuated as well, but not in relationship to the incarceration rates. Between 1996 and 2000, the number of felony sentences imposed each year increased by almost 40%, from 1634 in 1996 to 2274 in 2000. After 2000, it too leveled off somewhat and fluctuated in a range between 2674 (2004) and 2226 (2002). Overall, the number of felony sentences imposed each year increased by 56%, from 1634 in 1996 to 2553 in 2005.

*Figure 2-1* provides a graphical representation of the same information in *Table 2-1* and

illustrates that there is no clear trend in the rate of incarceration versus the rate of probation since 2000. *Figure 2-1* shows the historical period used for constructing the guidelines (1996-2003) as well as the period under the guidelines pilot program (June 2004 through December 2005).<sup>7</sup> *Figure 2-1* shows in graphic form the same steady decline in the incarceration rate from 1996 through 2000 and the fluctuation thereafter that was observed in *Table 2-1*. In *Chapter III*, we will take a closer look at how the guidelines may be redirecting the types of cases that receive a probation sentence since the inception of the guidelines pilot program.

<sup>7</sup>The guidelines apply to guilty pleas and verdicts entered on and after June 14, 2004. Because there is at least a 7-week lag between the entry of a plea or verdict and sentencing, guideline sentences did not begin to show up in the data until August of 2004, and not in large numbers until 2005.

**Table 2-2.** Trends in Sentences Imposed on Felony Defendants Sentenced, by Major Offense Category

Year	Total Sentenced	Violent	Property	Drug	Weapon	Public Order	Other
1996	1634	447 (27.4%)	236 (14.4%)	489 (29.9%)	139 (8.5%)	277 (17%)	46 (2.8%)
1997	1777	472 (26.6%)	252 (14.2%)	511 (28.8%)	174 (9.8%)	332 (18.7%)	36 (2%)
1998	1972	519 (26.3%)	309 (15.7%)	515 (26.1%)	175 (8.9%)	404 (20.5%)	50 (2.5%)
1999	2129	485 (22.8%)	271 (12.7%)	603 (28.3%)	153 (7.2%)	560 (26.3%)	57 (2.7%)
2000	2274	418 (18.4%)	238 (10.5%)	871 (38.3%)	124 (5.5%)	558 (24.5%)	65 (2.9%)
2001	2424	443 (18.3%)	257 (10.6%)	970 (40%)	155 (6.4%)	525 (21.7%)	74 (3.1%)
2002	2226	400 (18%)	220 (9.9%)	938 (42.1%)	145 (6.5%)	523 (23.5%)	0
2003	2649	538 (20.3%)	313 (11.8%)	1145 (43.2%)	271 (10.2%)	300 (11.3%)	82 (3.1%)
2004	2674	552 (20.6%)	251 (9.4%)	1257 (47%)	172 (6.4%)	363 (13.6%)	79 (3%)
2005	2553	525 (20.5%)	263 (10.3%)	1176 (46.1%)	203 (8%)	330 (12.9%)	56 (2.2%)

Table 2-2 shows the trends in the distribution of types of crimes by major offense categories since 1996.<sup>8</sup> Two major trends are evident, and help to explain the trends in incarceration rate and sentence length. First, the proportion of felony sentences for drug offenses increased substantially, with some fluctuation, from 29.9% of all felony sentences in 1996 to 46.1% in 2005. Second, the proportion of sentences for violent offenses decreased from 27.4% of all sentences in 1996 to 18.4% in 2000, and it has remained relatively constant since that time, standing at 20.5% of all sentences at the end of the period in 2005. Because the overall number of sentences rose during this period, there were more sentences for violent crimes in 2005 than in 1996, but the percentage relative to other crimes decreased.

As noted in the 2002 Report and updated here, as drug sentences increased and sentences for violent crimes decreased as a percentage of the court’s caseload, the proportion of offenders being sentenced to prison also declined. Drug offenders are more likely to receive a sentence to probation, as shown in *Chapter III*. Conversely, offenders convicted of violent crimes are more likely to receive a prison sentence. Therefore, it stands to reason that probation dispositions would grow over much of the period through 2000, as the proportion of violent crimes declined and the proportion of drug offenses grew, and then generally level off as relative percentages of violent crimes and drug offenses also leveled off.

<sup>8</sup>These crime categories do not correspond to the offense groups on the Master Grid and the Drug Grid of the pilot guidelines. We have used them in the past and continue to use them here because they are utilized by the Bureau of Justice Statistics (BJS) in their numerous reports on sentencing and corrections. The Commission classified Superior Court charges into these six major offense categories. “Violent” crimes include crimes such as Murder, Armed Robbery, and Assault with a Deadly Weapon. “Property” crimes include Unauthorized Use of a Motor Vehicle and Second Degree Burglary. Distribution of and Possession with Intent to Distribute Cocaine are the most common felony “drug” crimes. Carrying a Pistol without a License is the most common felony “weapon” offense. Most “public order” crimes involve absconding from a halfway house or other forms of custody and violations of the Bail Reform Act. Other crimes are included in a category for “crimes not listed.” No “other” crimes were recorded on the Court Information System for 2002.

### Sentence Length January 1996 – December 2005

The previous section noted that the incarceration rate for felony offenders declined between 1996 and 2000, then fluctuated between 2001 and 2005, with no apparent trend. Turning now to the length of prison sentences imposed, some variation from year to year is worth noting.

As shown in *Table 2-3*, from 1996 through 2005, the percentage of sentences between 12 months and 35 months increased steadily, from a low of 30% of all cases in 1996 to a high of 48% of all cases in 2005. During the same period, the percentage of sentences of 36 months or longer decreased.<sup>9</sup> Like the drop in incarceration rates generally and corresponding decrease in the proportion of violent crimes, the most significant decline in the proportion of sentences of

36 months or longer occurred between 1996 and 2000, before determinate sentencing and before the guidelines. It has fluctuated somewhat since that time, rising to 31% in 2002 and 2003, the same as in 1999, but dropping again to 25% in 2005, about equal to the proportion in 2000 and 2001. The remaining category of sentences, those shorter than 12 months, rose as a percentage of all sentences from 24% in 1996 to 44% in 2001, then dropped each year from 2002-2004, rising slightly again to 27% in 2005.

As previously noted, the prison ranges in the guideline grids were based on the principle that the guideline sentences should reflect historical sentencing practices as closely as possible. Therefore, overall average prison sentence lengths should not have changed dramatically in response to the introduction of sentencing guidelines

**Table 2-3.** Length of Incarceration Received by Felony Defendants (excludes Probation Sentences)

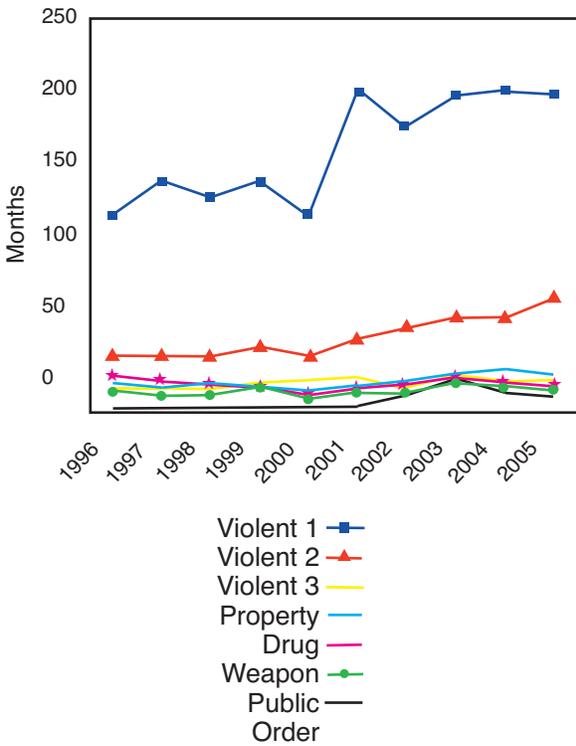
Year	Total Sentenced	% under 12 Months	% 12 to 35 Months	% 36 or more months
1996	1057	254 (24%)	317 (30%)	486 (46%)
1997	1070	300 (28%)	342 (32%)	428 (40%)
1998	1178	401 (34%)	365 (31%)	412 (35%)
1999	1126	417 (37%)	360 (32%)	349 (31%)
2000	1011	425 (42%)	313 (31%)	273 (27%)
2001	1235	544 (44%)	395 (32%)	296 (24%)
2002	1365	423 (31%)	519 (38%)	423 (31%)
2003	1432	372 (26%)	616 (43%)	444 (31%)
2004	1529	382 (25%)	703 (46%)	444 (29%)
2005	1609	435 (27%)	772 (48%)	402 (25%)

<sup>9</sup>The picture looks slightly different if the lines are drawn at 12 months or less, 13 to 36 months, and more than 36 months, but the general pattern remains essentially the same.

in June 2004. A cursory review of *Figure 2-2* shows no discernible pattern before or after introduction of sentencing guidelines for any major offense group,<sup>10</sup> and

sentences under the guidelines appear to be proceeding as expected. However, it may be too soon to detect any impact the guidelines may have, and the Commission will continue to monitor sentence length trends in future years. Although there does not appear to be any single factor that can explain the entire period of sentencing practice from 1996 through 2005, it does appear that the large increase in drug offenses, both absolutely and as a percentage of all crimes throughout the period, and a corresponding decrease in the percentage of violent crimes, particularly between 1996 and 2000, does explain some of the variation observed from year to year in both the type of sentence imposed and the length of prison sentences. There is enough variation from year to year throughout the period to effectively rule out a conclusion that the introduction of sentencing guidelines near the end of the period can explain any of the variation. In *Chapter IV* we will explore in more detail what we are able to say about any impact the guidelines have had on sentencing practice in 2004 and 2005.

**Figure 2-2.** Mean Prison Sentence by Major Offense



<sup>10</sup>See footnote 8 for Major Offense categories. In Figure 2-2, violent crimes are further separated into three levels: Level 1 includes violent crimes assigned to Groups 1 through 4 on the Master Grid; Level 2 includes violent crimes assigned to Groups 5 and 6 on the Master Grid; and Level 3 includes violent crimes assigned to Groups 7 through 9 on the Master Grid.