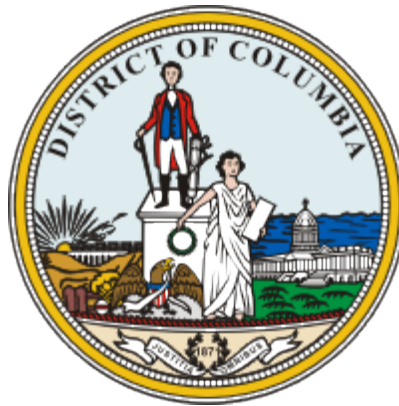




DISTRICT OF COLUMBIA SENTENCING AND CRIMINAL CODE
REVISION COMMISSION

2013 ANNUAL REPORT



APRIL 25, 2014

DISTRICT OF COLUMBIA SENTENCING AND CRIMINAL CODE REVISION
COMMISSION

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Mission Statement

The mission of the District of Columbia Sentencing and Criminal Code Revision Commission is to implement, monitor, and support the District's Voluntary Sentencing Guidelines, to promote fair and consistent sentencing policies, to increase public understanding of sentencing policies and practices, to evaluate the effectiveness of the guidelines system in order to recommend changes based on actual sentencing and corrections practice and research, to analyze the District of Columbia's current criminal code and administration of existing criminal laws, and to propose reforms in the criminal code to create a uniform and coherent body of criminal law in the District of Columbia.



District of Columbia
Sentencing and Criminal
Code Revision Commission

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Chairperson*

*Barbara S. Tombs-Souvey
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April 26, 2014

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The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
John A. Wilson Building, Suite 504
1350 Pennsylvania Avenue NW
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Dear Chairman Mendelson:

In compliance with its statutory obligation, the District of Columbia Sentencing and Criminal Code Revision Commission respectfully submits its 2013 Annual Report.

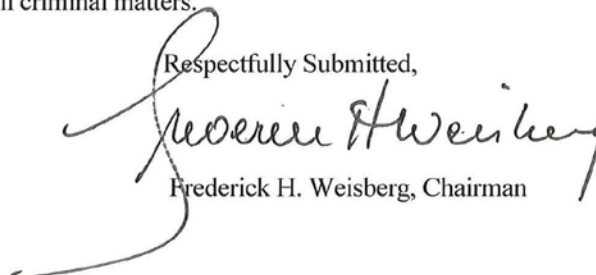
*Non-voting members:
Maria Amato, Esq.
Michael Anzallo
Thomas R. Kane, Ph.D.
Hon. Tommy Wells
Stephen J. Husk*

During 2013, the Commission developed and implemented the agency's new data system, GRID, which utilizes the D.C. Superior Court's IJIS 12.1 data feed. The comprehensive data now available to the Commission allows for more in-depth analysis of sentencing practices and trends, as well as determination of judicial compliance. This data will also serve as the foundation for an evaluation of the effectiveness of the Voluntary Sentencing Guidelines.

The Commission ranked 40 new Terrorism offenses during the past year and made several substantive policy changes to the Sentencing Guidelines, primarily related to various sentencing enhancements, including Offenses Committed During Release. In addition, a number of technical changes were made to the Guideline Manual for clarification purposes.

Finally, the Criminal Code Revision project made significant progress. During 2013, the project drafted General Provisions for the Code, reorganized Title 22 offenses, and revised specific property offenses. This work is consistent with the Commission's mission to provide clarity and ensure appropriate and effective application of the Code in all criminal matters.

Respectfully Submitted,



Frederick H. Weisberg, Chairman

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MEMBERSHIP OF THE DISTRICT OF COLUMBIA SENTENCING AND CRIMINAL CODE REVISION COMMISSION
As of April 15, 2014

The Honorable Frederick H. Weisberg, Chairman
Superior Court of the District of Columbia

The Honorable Harold L. Cushenberry
Superior Court of the District of Columbia

The Honorable J. Ramsey Johnson
Superior Court of the District of Columbia

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Laura E. Hankins, Esq.
Public Defender Service for the District of Columbia

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Georgetown University Law Center

Cedric Hendricks, Esq.
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United States Attorney's Office for the District of
Columbia

Michele Roberts, Esq.
Attorney, Private Practice

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Office of Attorney General, District of Columbia

Julie E. Samuels, M.P.P.
Urban Institute, Justice Policy Center

Molly M. Gill, Esq.
Citizen Member

Marvin Turner
Citizen Member

Earl J. Silbert, Esq.
Attorney, Private Practice

Maria Amato**
District of Columbia Department of Corrections

Michael Anzallo**
D.C. Metropolitan Police Department

Stephen J. Husk**
United States Parole Commission

Thomas R. Kane, Ph.D.**
Federal Bureau of Prisons

The Honorable Tommy Wells**
Council of the District of Columbia

** Non-Voting Member

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Attorney Advisor

Eleanor Schaffer, Esq.
Staff Counsel

Jinwoo Park, Esq.
Staff Counsel

EXECUTIVE SUMMARY

The District of Columbia Sentencing and Criminal Code Revision Commission's (the Commission) 2013 Annual Report reviews the work of the agency over the past year, analyzes felony sentences imposed during 2013, describes substantive changes made to the Sentencing Guidelines, and identifies the new rankings assigned to felony offenses during the year. The report also provides an overview of the Commission's progress on the Criminal Code Revision Project.

Data Collection

In 2013, the Commission developed and implemented a new data system called the Guideline Reporting Information Data (GRID) system. The system has allowed the agency to significantly improve and expand both the quality and quantity of information it uses to analyze felony sentences and to calculate judicial compliance with the Guidelines. Offense, conviction, and sentencing related data from the Superior Court of the District of Columbia (Superior Court) and criminal history information provided by Court Services and Offender Supervision Agency (CSOSA) are electronically transferred to the Commission on a daily basis and merged to create a comprehensive agency database.

The electronic transfer of an offender's criminal history score data from CSOSA enables the Commission to establish a comprehensive sentencing record for each defendant convicted of a felony offense and automatically calculate judicial compliance with the Sentencing Guidelines. This capability replaces a prior resource intensive manual processes and that was subject to data entry errors which decreased data quality.

Through the implementation of the GRID system, the Commission has improved both its data access capabilities and data quality, enabling the agency to better monitor and analyze sentencing policy and trends in the District. In the future, the expanded analytical capacity of the Commission will allow for more comprehensive evaluation of the Sentencing Guidelines and will further the Commission's goal of developing data driven policy decisions that ensure fairness and consistency in sentencing.

Key Data Findings

In 2013, there were 2,106 felony cases and 2,895 felony counts sentenced in Superior Court. This represents a decrease of 413 felony cases and 849 felony counts sentenced from 2012. Felony cases sentenced this year also reflect a decrease of 536 cases and 794 felony counts from 2011, demonstrating a decline in the number of both sentenced cases and counts over the past three years. Of the 2,106 felony cases sentenced, 1,720 represented single count and 386 were multiple count cases. Ninety percent of all cases were disposed of through a guilty plea, which is consistent with previous years.

There were 1,972 offenders sentenced this year, with 134 offenders sentenced in more than one case during 2013. These figures reflect an overall reduction in the total number of offenders sentenced but a slight increase in the number of offenders sentenced in more than one case. Offender demographics for 2013 shows minimal change from prior years.

Prison remains the most common sentence type imposed by Superior Court judges, followed by probation. A short split sentence, a combination of incarceration and probation, was the least common sentence type. A prison sentence was imposed in 65% of all cases and 71% of all counts. Prison sentences were imposed more frequently for non-drug offenses; while the rate of probation was highest for drug offenses. Compared to past years, during 2013, there was a slight decline in the number of prison sentences imposed with a corresponding increase in the number of short split sentences. However, the percentage of prison versus non-prison has sentences has remained relatively constant over the past few years.

Assault, attempted drug distribution offenses, drug distribution offenses, robbery, and weapon offenses, which account for over 70% of all felony sentences imposed, remained the most common offense types over the past three years; however, the ranking order of these specific five offense groups has changed slightly by year. In 2013, robbery convictions increased as a percentage of the total number of cases, followed by weapon and assault offenses. The increase in sentences for robbery corresponds to the increase in arrests for what is commonly referred to as “snatch and grab” offenses involving cell phones or other electronics. In contrast, there has been a continuing decline in the number of drug offenses sentenced since 2011. In 2013, drug offenses accounted for only 516 sentences, representing a 44% decrease from 2012 and 55% decrease from 2011. This notable decline in drug sentences contributes significantly to the overall decline in cases and counts sentenced in 2013.

Guidelines Compliance

In 2013, the compliance rate for all felony sentences imposed was 96.1%. Since the inception of the Guidelines, the yearly compliance rate has been near or above 90%. This finding indicates that Superior Court judges are consistently applying the Guidelines and imposing felony sentences within the recommended Guidelines range. The increased compliance rate is due to a combination of factors including: (1) the length of time the guidelines have been in place; (2) modifications to the guidelines to ensure the recommended sentence is appropriate; and (3) improved data collection and validation practices.

Compliant in-the-box sentences accounted for 91.6% of all sentences imposed, meaning that the sentence imposed was within the recommended range and sentence type. Compliant departures accounted for 1.6% of all sentences imposed during the year. Although they represent a small percentage of all sentences imposed, departures provide insight into why judges choose to impose a sentence outside the Guidelines. There were 13 aggravating (or upward) departures and 25 mitigating (or downward) departures. Violent offenses constituted a greater proportion of

compliant departures, which is in contrast to 2012, when drug offense for the largest proportion of compliant departures.

In 2013, non-compliant departures constituted 3.9% of all sentences for which compliance was calculated. The Commission considers a sentence to be a non-compliant departure when the judge imposes an out-of-the-box sentence without citing a departure principle. The data indicates that weapon offense accounted for the greatest proportion of all non-compliant sentences, followed by violent offenses.

Guidelines Modifications

The Sentencing Commission made several modifications to the Guidelines Manual in 2013. The changes included allowing any party to challenge a presentence report writer's initial scoring of an out-of-District conviction and encouraged presentence report writers to include an explanatory footnote when they score certain out-of-District offenses. These changes were made to increase transparency and fairness to the process of scoring out-of-District convictions. The Commission also ranked 40 criminal offenses in 2013. These rankings applied to terrorism and while armed sex offenses.

Criminal Code Revision Project

The Criminal Code Revision (CCR) project made significant progress towards revising the District's Criminal Code. A project plan was developed, approved by the Commission, and submitted to the Council, to guide the work of the project through its projected completion date in September 2016. The project plan details the priorities, methodology, milestones, and deliverables for the revision of the criminal code.

During the early part of 2013, the project focused on drafting general provisions for a revised criminal code. General provisions refer to the practice of codifying common definitions and principles of liability that apply to most criminal offenses. They also improve a criminal code's clarity and consistency by replacing the varied, sometimes conflicting, terminology and definitions used in particular offenses that were enacted separately over many years.

The second activity undertaken by the CCR project was the reorganization of criminal offenses in Title 22 of the D.C. Code, with the goal of creating a logical and user-friendly structure. The District's current criminal code can be confusing for both legal practitioners and the public because it does not always group similar offenses together and it often includes extraneous information besides offense definitions and penalties. The reorganization included a macro-level restructuring, consisting of 13 subtitles such as Offenses Against Persons, Offenses Against Property, Drug Offenses and Weapon Offenses, etc., that were further reorganized into chapters and subchapters. This new structure was applied to hundreds of criminal offense and penalty provisions contained in Title 22 of the D.C. Code.

The final project activity during 2013, involved drafting revisions of the most frequently convicted and serious criminal offenses. In 2013, the Commission identified 37 offenses and offense types that collectively accounted for over 95% of all 2012 felony convictions. These offenses include all major types of crime: property crimes, drug and weapon offenses, crimes against persons, and offenses affecting government operations. Property offenses were the initial offense group selected for revision. Revision of these target offense groups and offense types will significantly contribute to the modernization of the District's criminal code.

CHAPTER ONE

COMMISSION PROFILE

I. History of the D.C. Sentencing and Criminal Code Revision Commission

A. The Revitalization Act, the Truth in Sentencing Commission, and the Creation of the Advisory Commission on Sentencing (1997-1998)

In 1997, Congress enacted the National Capital Revitalization and Self-Government Improvement Act of 1997 (the Revitalization Act). The legislation brought many significant changes to the District's criminal justice system, including the closure of the Lorton Correctional Complex, the abolition of the District of Columbia Parole Board, the creation of the Court Services and Offender Supervision Agency (CSOSA), and the transfer of imprisoned felony offenders from the D.C. Department of Corrections to the Federal Bureau of Prisons.

The Revitalization Act also established the Truth-in-Sentencing Commission (the TIS Commission) as an independent agency of the District of Columbia government. The mandate of the TIS Commission, codified at D.C. Code § 24-1212 (1997), was to make recommendations to the Council of the District of Columbia (the Council) for amendments to the District's sentencing laws for felony offenses committed on or after August 5, 2000 in order to comply with the Revitalization Act. One of the mandated recommendations was that the sentencing system for a list of specified felonies would convert from an indeterminate system, with a minimum and maximum prison term and parole, to a determinate sentencing system, where the offender is required to serve at least eighty-five percent of the prison term imposed, followed by a period of Supervised Release supervised by the United States Parole Commission.

The TIS Commission issued its formal recommendations to the Council on February 1, 1998, which were narrowly tailored to the requirements of the Revitalization Act. The formal recommendations of the TIS Commission were ultimately adopted by the Council as the Truth in Sentencing Amendment Act of 1998, D.C. Code § 24-403.01.

The TIS Commission submitted an additional Comments and Suggestions Report, which identified outstanding issues for the Council's consideration. One of these supplemental recommendations was to create an entity to advise and assist the Council in the development of sentencing policy. In response, the Council created the District of Columbia Advisory Commission on Sentencing (the Commission). *See* Advisory Commission on Sentencing Establishment Act of 1998, D.C. Code § 3-101, et seq. The Council directed the Advisory Commission to make recommendations consistent with the goals of the Revitalization Act, including the use of intermediate sanctions in appropriate cases, to conduct an annual review of sentencing data, policies, and practices, and to suggest any other appropriate factors to enhance

the fairness and effectiveness of criminal sentencing policies and practices in the District of Columbia.

B. The Sentencing Reform Amendment Act of 2000 and the Development of Sentencing Guidelines in the District of Columbia (1998-2004)

The Commission conducted extensive research on sentencing practices in the District, and based on this research, prepared submissions to the Council pursuant to its mandate. This resulted in the 1999 publication of *Criminal Sentencing Practices in the District of Columbia 1993-1998*. In response to specific directives from the Council, on April 5, 2000, the Commission issued *Sentence Recommendations to the Council of the District of Columbia*, which included several important recommendations, the most prominent being the conversion from indeterminate to determinate sentencing for all felony offenses, the elimination of parole, and the imposition of Supervised Release following incarceration. The 2000 report also suggested that the District consider adopting some form of structured sentencing as a way of promoting fairness under the new determinate sentencing system. The Council adopted these recommendations in the Sentencing Reform Amendment Act of 2000, D.C. Code § 24-403.01 (2000). This legislation gave the Commission the additional responsibility of surveying structured sentencing systems throughout the country and recommending the type of structured system, if any, that would best serve the needs of the District's criminal justice system. The Commission was also required to continue reporting on the implementation of determinate sentencing in the District.

In 2003, the Commission recommended adoption of Voluntary Sentencing Guidelines for the District of Columbia (the Guidelines). The following year, the Council enacted the Advisory Commission on Sentencing Structured Sentencing System Pilot Program Amendment Act of 2004, directing the Commission to assist the Superior Court of the District of Columbia (the Superior Court) with the implementation of the Guidelines as a pilot program. This legislation also made the Commission a permanent D.C. Government agency, renaming it the District of Columbia Sentencing Commission. Superior Court judges began imposing sentences under the Voluntary Sentencing Guidelines for all felony pleas and verdicts on and after June 14, 2004. To date, the Commission continues to monitor the implementation of the Sentencing Guidelines in the District.¹

¹ See District of Columbia Sentencing and Criminal Code Revision Commission Amendment Act of 2007, D.C. Code § 3-101 (2007).

C. Revision to the Criminal Code and Continued Monitoring of Voluntary Sentencing Guidelines (2004-Present)

In 2006, the Council expanded the mandate of the Commission to include revision of the District's Criminal Code. The Council had previously expressed concern about confusing and outdated statutory language and overlapping provisions in the Criminal Code that had the potential to affect the fairness of sentencing practices. In 2006, after research and input from the public, the Council enacted the Advisory Commission on Sentencing Act of 2006, which directed the Commission to examine the Criminal Code and to make recommendations to provide for a uniform and coherent body of law.² This legislation directed the Commission to examine the District's criminal statutes to ensure clear and consistent language, to organize existing statutes in a logical order, to address proportionality of fines and penalties, to propose a classification system for misdemeanor statutes, and to propose any amendments necessary to facilitate the equitable administration of the criminal laws in the District of Columbia. The legislation also expanded the membership of the Commission and changed the name of the Commission to the District of Columbia Sentencing and Criminal Code Revision Commission, to reflect its new code revision mandate.

In addition to its criminal code revision efforts, the Commission continues to actively pursue its directive to promote fair and consistent sentencing policies. Since its inception, the Commission has accomplished many important reforms, including the development of the District's current sentencing structure, which has consistently yielded high compliance rates and has allowed the Commission to make recommendations based on actual sentencing data. The Commission looks forward to continuing its collaboration with the Council, the judiciary, and criminal justice agencies to ensure that the District of Columbia's public safety and justice needs are met.

II. Legislative Mandate

The Commission currently has three primary statutory responsibilities: (1) to monitor the implementation and use of the Guidelines; (2) to review and analyze pertinent sentencing data; and (3) to develop recommendations for criminal code revision.³ As part of its mandate, the Commission is responsible for collecting data from the Superior Court and CSOSA to assess compliance with the Guidelines, for identifying and addressing problems with the District's sentencing system, and for monitoring historic and emerging sentencing trends. The Commission is also responsible for incorporating each new felony offense or sentencing provision enacted by the Council into the Guidelines structure. Finally, the Commission is in the process of fulfilling its code revision mandate of examining the criminal code and formulating

² See Advisory Commission on Sentencing Act of 2006, D.C. Code § 3-101.1 (2007).

³ The legislation governing the D.C. Sentencing and Criminal Code Revision Commission can be found at D.C. Code §§ 3-101 (2012), Et seq.

recommendations that will correct inconsistencies, achieve further proportionality in imprisonment terms and fines, and create clarity and coherence in the District's criminal statutes.

III. Commission Membership

The Commission consists of twenty members: fifteen voting members and five non-voting members. Its membership includes representation from various criminal justice agencies, the judiciary, academic and research institutions, practicing attorneys, and the public. This diverse membership guarantees a variety of perspectives when developing sentencing and criminal law policy recommendations for the Council.

The voting members of the Commission are:

- Three judges of the Superior Court of the District of Columbia, appointed by the Chief Judge of the Superior Court;
- The United States Attorney for the District of Columbia or his or her designee;
- The Director of the Public Defender Service for the District of Columbia or his or her designee;
- The Attorney General for the District of Columbia or his or her designee;
- The Director of the Court Services and Offender Supervision Agency for the District of Columbia or his or her designee;
- Two members of the District of Columbia Bar, one who specializes in the private practice of criminal defense in the District of Columbia, and one who does not specialize in the practice of criminal law, appointed by the Chief Judge of the Superior Court in consultation with the President of the District of Columbia Bar;
- A professional from an established organization devoted to research and analysis of sentencing issues and policies, appointed by the Chief Judge of the Superior Court of the District of Columbia;
- Two citizens of the District of Columbia, one of whom is nominated by the Mayor subject to confirmation by the Council, and the other who is appointed by the Council; and
- Three professionals from established organizations, to include institutions of higher education, devoted to the research and analysis of criminal justice issues, appointed by the Council.

The non-voting members of the Commission are:

- The Director of the District of Columbia Department of Corrections or his or her designee;
- The Chief of the Metropolitan Police Department or his or her designee;
- The Director of the United States Bureau of Prisons or his or her designee;

- The Chairperson of the United States Parole Commission or his or her designee; and
- The Chairperson of the Council committee that has oversight of the Commission.

The Commission's voting membership did not change in 2013. However, in early 2013, The Honorable Tommy Wells was sworn in as Chairman of the D.C. Council Committee on the Judiciary and Public Safety, which oversees the Commission.

IV. Commission Meetings and Activities

The Commission meets throughout the year to address a wide array of issues, which include: discussing sentencing data and research; considering modifications to the Guidelines; ranking any new offenses promulgated by the Council; evaluating developments in sentencing policy in the District; monitoring the Commission's data gathering techniques and the implementation of its new data system; and discussing proposed amendments to the Criminal Code. Meetings are open to the public, and interested parties are encouraged to attend. Meeting dates are published in advance in the D.C. Register, on the D.C. Board of Ethics and Government Accountability's website, and on the Commission's website. The Commission's website also includes an agenda for each upcoming meeting.

In 2013, the Commission met eight times on the following dates:

January	15	June	18
February	26	September	17
March	19	October	22
May	21	November	19

The minutes of the Commission's public meetings are available online at the Commission's website, located at <http://sentencing.dc.gov>. Commission Meetings are usually held on the third Tuesday of each month and convene in Suite 430 South, One Judiciary Square, 441 4th Street, NW, Washington, D.C. 20001.

Over the past year, the Commission has enacted changes to the Guidelines, ranked 40 individual felony offenses, and clarified criminal history scoring rules. In addition, in 2013 the Commission built and implemented a new data system, named the Guidelines Reporting and Information Data System (GRID system).⁴ The Commission fully staffed the Criminal Code Revision Project in January 2013.⁵ During the year, the Commission published the 2012 Annual Report, the 2013 Guidelines Manual, an Issue Paper, a Criminal Code Revision Project

⁴ The GRID system is discussed in detail in Chapter Three.

⁵ For details on the Criminal Code Reform Project, see Chapter Six.

Management Plan, and a semi-annual report to the Council on the status of the Criminal Code Revision Project.

V. Committee Activities

In addition to the meetings of the full Commission, several working committees meet on a regular basis to formulate recommendations on specific sentencing and Criminal Code policy issues. These committees offer proposals and suggestions for action by the full Commission. The following represents an overview of the Commission's committee structure.

A. Criminal Code Revision Committee

This committee evaluates the District's criminal statutes and makes recommendations to the Commission on code revision. This activity advances the Commission's legislative mandate to prepare comprehensive recommendations on code revision for the Council and the Mayor.

The current Criminal Code Revision Committee (CCRC) is comprised of five Commission members with diverse and balanced backgrounds. Mr. Ronald Gainer, a retired attorney formerly employed by the United States Department of Justice, has served as the Chair of the CCRC since the Committee's inception. Chairman Gainer is a nationally recognized expert in the area of criminal law reform and has written extensively on the topic. Other committee members are: Professor Donald Braman, an Associate Professor of Law at the George Washington University School of Law; Ms. Renata Kendrick Cooper, Special Counsel to the United States Attorney for the District of Columbia; Ms. Laura Hankins, Special Counsel to the Director of the Public Defender Service for the District of Columbia; and Mr. Dave Rosenthal, Senior Assistant Attorney General in the Office of the Attorney General for the District of Columbia.

The CCRC's work in 2013 followed the Project Management Plan approved by the Commission and submitted to the Council in April 2013. The Project Management Plan identified sections of the D.C. Code for revision and provided timelines and milestones to measure progress. By year's end, the Committee had drafted definitions and other general provisions applicable to all criminal offenses, and outlined a reorganization of criminal offenses in Title 22 of the D.C. Code. The Committee has also begun revising specific property offenses, such as theft, which are scheduled for completion in May 2014. In the course of its 2013 work, the Criminal Code Revision Committee held 21 in-person meetings and reviewed over 800 pages of legal research prepared by agency staff.

For more information on this Committee and the Criminal Code Revision Project generally, see Chapter Six of this report.

B. Research Committee

The Research Committee was created in 2011 to undertake more complex sentencing research projects related to the Commission's objectives. This Committee provides important information on sentencing practices under the Guidelines and forms the basis for future policy recommendations made by the Commission. The Committee's first major project is a five-year evaluation of the Guidelines to examine whether the goals of the sentencing guidelines - to achieve consistency, certainty, and proportionality in criminal sentencing - have been reached. This evaluation is scheduled to begin in late 2014 or early 2015, after the GRID system has been operational for a year. The project will analyze numerous sentencing-related practices and issues, including consecutive and concurrent sentencing patterns, type of sentence imposed, total sentence imposed, demographic factors, and count versus case sentencing distinctions.

C. Ranking Committee

The primary aim of the Ranking Committee is to submit proposals for new or modified criminal offense rankings and other possible Guidelines rule changes to the Commission. The Committee also evaluates potential policy changes that may affect the Guidelines and other sentencing issues. The Ranking Committee oversees all changes to the D.C. Voluntary Sentencing Guidelines Manual.

In the fall of 2013, the Commission voted to invite participation on the Ranking Committee on an issue-by-issue basis. While the Ranking Committee is open to all Commissioners, representatives from the Office of the Attorney General, Public Defender Service, and the United States Attorney's Office are regular participants.

Last year, after substantial research, discussion, and debate, the Committee reached unanimous agreement on the recommended rankings for more than 38 new terrorism offenses, as well as the ranking and re-ranking of two sex abuse while armed offenses. The Commission voted to accept all of the recommended rankings.

For more information on the specific work of the Committee and 2013 changes to the Guidelines, see Chapter Two of this report.

D. Public Outreach Committee

The Public Outreach Committee focuses on educating the public, serving as a resource to the community, and collecting information that will inform the Commission's efforts to evaluate sentencing policy in the District of Columbia. Recently, the Committee initiated extensive

changes to the Commission’s website, designed to improve public access to the Commission’s resources.

VI. Commission Staff Activities

A. Staffing Developments

Until 2012, the Commission’s staff consisted of an executive director, a research analyst, a data manager, a staff attorney, and a staff assistant. The agency’s staff increased in 2012, when the Commission received funding for an additional five full-time staff members to undertake the work of the Criminal Code Revision Project. The Criminal Code Revision Project was fully staffed and operational by early 2013. Additionally, due to the Commission’s expanded need for legal guidance, in the spring of 2013, the staff attorney position was transitioned into a General Counsel position.

The 2013 Commission staff includes:

Barbara Tombs-Souvey Executive Director	Richard Schmechel, Esq. Criminal Code Revision Project Director	Linden Fry, Esq. General Counsel
Mia Hebb Staff Assistant	Michael Serota, Esq. Attorney Advisor	Eleanor Schaffer, Esq. Staff Counsel
Thurman Sanders, IV Data Management Specialist	Rachel Redfern, Esq. Attorney Advisor	Jinwoo Park, Esq. Staff Counsel
Anu Shrestha ⁶ Research Analyst	Jessica Peterson ⁷ Staff Counsel	Leah Branch Staff Counsel

B. Supporting the Application of the Guidelines

The Commission supports the application and use of the Guidelines by: 1) holding training and education sessions; 2) releasing print and electronic publications; 3) providing information on the Commission’s website; and 4) responding to inquiries.

⁶ Ms. Shrestha left the agency in early 2014.

⁷ Ms. Peterson and Ms. Branch left the agency during the second half of 2013. Ms. Schaffer and Mr. Park filled the vacant positions.

1. Guidelines Training and Education Sessions

Commission staff holds Sentencing Guidelines training sessions for interested parties throughout the year. The subject area and scope of each training/education session varies depending on the needs and interests of the audience. For members of the public or individuals interested in learning general information about the Guidelines, Commission staff offers a basic introduction and overview of the Guidelines and sentencing in the District of Columbia. For legal practitioners, the Commission provides in-depth trainings that review the Guidelines rules and the calculation of a defendant's criminal history score and discuss practical application issues and any recent changes to the Guidelines. Judiciary training sessions focus on issues that may be of concern to the court or particular Judges, Guidelines departure procedures, and scenario-based training exercises. The Commission also offers individually tailored trainings for other criminal justice agencies, which focus on their specific needs. In calendar year 2013, Commission staff provided in-person Guidelines training to more than 58 individuals. Anyone interested in arranging an individual or group-training session should contact the Commission.

In addition to conducting training sessions, in 2013, the Commission modified its website, dedicating a significant portion of the site to Guidelines educational and training materials. The Commission is particularly excited about the recent addition of self-guided Guidelines PowerPoint trainings, which currently include a basic introduction and overview of the Guidelines for members of the public or new practitioners, and a more detailed training on how to calculate a defendant's prior criminal history score. The PowerPoint trainings also direct users to other materials and provide them with information about how to contact the Commission with specific questions. This new functionality allows practitioners and the public to receive immediate training without having to schedule an in-person session. Moving forward, the Commission will continue to expand its PowerPoint trainings options and potential use of webinars.

2. Printed Publications

The Commission released three official publications in 2013: the 2012 Annual Report; the 2012 Guidelines Manual; and an Issue Paper. Additionally, the Commission submitted two updates to the Council regarding the Criminal Code Revision Project: the Project Management Plan and the Semi-Annual Report to the Council. Each of these publications or submissions was part of the Commission's continual effort to promote a comprehensive understanding of sentencing trends and practices in the District of Columbia, to encourage the accurate application of the Guidelines, and to keep the Council and public informed of the Commission's progress on reforming the Criminal Code. Sentencing Commission publications and submissions are

published on the Commission's website and mailed to all major criminal justice agencies and other interested organizations.⁸

In compliance with its statutory duty under D.C. Code § 3-104(d), the Commission published the 2012 Annual Report in April 2013. The 2012 Annual Report contained a detailed overview of the Commission's recent work, a breakdown of felony sentences imposed in Superior Court during 2012, an analysis of judicial compliance with the Guidelines, and an update on the work of the Criminal Code Revision Project. The Commission also provided detailed information on its new data collection and error checking methods, the substantive changes to the Sentencing Guidelines in 2012, and an in-depth assessment of felony sentencing data based on offense type, sentence type, criminal history score, and defendant demographics.

The Commission provided a Criminal Code Revision Project Management Plan to the Council in April 2013, followed by its first semi-annual report and progress update to the Council in September 2013. The Project Management Plan outlined the steps, timetable, and benchmarks that the Criminal Code Revision Committee and Commission will use to complete its mandate to revise the criminal code by the fall of 2016. The semi-annual report updated the Council on the progress of the Committee to date and informed them that the project is currently on schedule as outlined in the Project Management Plan.

In June 2013 the Commission also published its annual revisions to the Guidelines Manual, which went into effect on June 17, 2013. The 2013 changes to the Guidelines Manual are outlined in Chapter Two of this report. Hard copies of the 2013 Manual were distributed to all District of Columbia Court of Appeals judges, Superior Court judges, Councilmembers, and the Mayor. Commission staff distributed an electronic PDF version of the Manual to practitioners and criminal justice agencies via e-mail. The Commission also posted the Manual on the Commission's website for downloading.

The Commission published an Issue Paper reviewing the Guidelines' impact on the length of felony sentences imposed in the District of Columbia. Specifically, the paper examined whether the length and type of sentences imposed in 2012 were proportionate to the severity of the offense and the offender's Criminal History Score. The sentence imposed for every felony

⁸The Commission's distribution list includes, among others, all Commissioners, all Councilmembers, all District of Columbia Court of Appeals and Superior Court Judges (active and senior), the Mayor, the Deputy Mayor for Public Safety and Justice, the United States Attorney's Office, the Office of the Attorney General, the Public Defender Service for the District of Columbia, CSOSA, the Metropolitan Police Department, the Metropolitan Police Department Chief's Citizens Advisory Council, the Criminal Justice Coordinating Council, the District of Columbia Pretrial Services Agency, the District of Columbia Department of Corrections, the U.S. Parole Commission, the District of Columbia Office of Victim Services, the District of Columbia Office on Ex-Offender Affairs, the District of Columbia Department of Youth Rehabilitation Services, the District of Columbia Justice Grants Administration, Advisory Neighborhood Commissioners, and various community, legal, and victim advocacy organizations.

conviction was analyzed to determine the type of sentence imposed (prison, short split, or probation only) and whether it fell outside of or within the top 25%, middle 50% or bottom 25% of the applicable Guidelines sentencing range. Significantly, the results showed that among sentences within the recommended Guidelines range, 41.4% fell in the bottom 25% of the recommended sentencing range and more than half of all drug sentences were in the bottom 25% of the recommended sentencing range. A more detailed discussion of the data and its analysis can be found in the paper. The findings presented suggest that reviewing the Guideline ranges within each grid box may be warranted to ensure certain and consistent sentencing practices.

3. The Website

As part of an ongoing effort to increase public access to current information on the Commission and the Guidelines, the Commission publishes a wealth of materials and Guidelines resources on its website, located at <http://sentencing.dc.gov>.

The website resources include:

- Sentencing Commission news, including the date of the next Commission meeting;
- Sentencing Guidelines updates and alerts, where the Commission notes any recent changes to the Guidelines;
- An electronic copy of the current Guidelines Manual and all prior versions of the Manual;
- The schedule of all upcoming Commission meetings;
- Minutes from prior Commission meetings;
- A direct link to send questions to the Executive Director;
- Information on how to contact the Commission, request a training session, or receive assistance applying the Guidelines;
- A chronology of the Guidelines and the Commission;
- A list of Commission members;
- A frequently asked questions (FAQ) section providing detailed answers to common Guidelines questions;
- A glossary of Guidelines and sentencing terminology;
- Self-guided Guidelines PowerPoint trainings; and
- Contact information for Commission staff members to discuss specific questions or schedule in-person training sessions.

Members of the public or practitioners unfamiliar with the Guidelines can quickly gain a basic understanding of the history, purpose, and scope of the Guidelines through the FAQ and history of the Guidelines sections. At the same time, resources such as Guidelines Alerts, manuals, and

meeting minutes allow practitioners to find the most detailed and current information on the Guidelines, along with a complete historical index of Guidelines Manuals.

Similar to 2012, in 2013 the Commission staff continued to add and update features on the agency's website. More than ever, the website is now a convenient place for practitioners and the public to access information about the Commission and to learn how the Guidelines operate. Most of the new website features concentrate on providing training and information about applying the Guidelines. The improvements made by the Commission to the website have resulted in a steady increase in web visits since 2011.⁹ In calendar year 2013, web visits rose to 3,342 visits from 3,161 in 2012 and 796 in 2011.

Over the past several years, the staff has also utilized the website as a means of disseminating published materials such as the Sentencing Guidelines Manual, the Annual Report, and Issues Papers. This has allowed the Commission to reduce printing costs while simultaneously allowing for wider distribution of the Commission's work.

Continual website updates aim to increase the web presence of the Commission and to offer easier access to helpful resources on sentencing and the Guidelines. The enhanced historical information and reference material is of use to both the seasoned practitioner and any member of the public with no prior experience on sentencing matters. Anyone interested in learning more about the Commission or the Guidelines is encouraged to visit the Commission's website at <http://sentencing.dc.gov>, to utilize the available resources or to contact the Commission directly.

4. Responding to Inquiries

Commission staff is available daily to address questions, issues, or concerns about the application of the Guidelines. The Commission responds to a wide variety of questions and inquiries from judges, Superior Court personnel, government and defense attorneys, CSOSA, the criminal justice community, and members of the public. Commission staff addresses basic questions about the purpose of the Guidelines or sentencing in the District, as well as other inquiries requiring more detailed information, such as conviction and sentencing data. The majority of inquiries are from CSOSA pre-sentence report investigators, prosecutors, criminal defense attorneys, and court personnel, requesting advice or direction in applying the Guidelines in a specific case, the calculation of a defendant's criminal history score, or the scoring of a specific out-of-District conviction. Guidelines support is available by e-mailing or calling the Commission and via a direct link on our website.

⁹ The Commission defines website visits as unique website visitors, it does not count repeat page hits by the same visitor.

Commission staff responded to 548 Guidelines and information inquiries in FY 2013, up from 491 in FY 2012. More than 95% of the inquiries made to the Commission related to the scoring of a defendant's prior criminal history, a defendant's applicable sentencing range, or whether a specific sentence was compliant with the Guidelines. Excluding data inquiries, which sometimes involve extensive information gathering and analysis, Commission staff responded to all but seven of the inquiries within one business day. Most of the questions that required more than a day to respond involved complex legal questions or required action by the full Commission.

It is important to note that Commission staff only provides Guidelines advice and guidance; they do not make official determinations regarding the application of the Guidelines in specific cases; only the sentencing judge assigned to a specific case can make official Guidelines determinations. For example, if a practitioner would like to know how a defendant's prior out-of-District conviction would factor into his or her prior criminal history score, a Commission staff member will review the applicable Guidelines rule with the practitioner and inform them how the offense has been scored in the past. However, Commission staff will never determine the ultimate scoring of an offense because the final decision remains with the sentencing judge. Similarly, when inquiries relate to unranked offenses or issues that are not addressed in the Manual, Commission staff may provide general information, but the ultimate resolution of the issues or the ranking of an unranked offense will be determined by the Commission, not the staff.

C. Sentencing Review and Analysis

As presented in later chapters of this report, reviewing and analyzing Guidelines usage and sentencing trends in the District of Columbia is one of the primary functions of the Commission. In FY 2013, Commission staff once again focused on improving our data collection and analysis procedures to ensure that we are reporting accurate, timely, and useful sentencing data analysis. Similar to FY 2012, in FY 2013 Commission staff spent more than 1,500 hours retrieving, cleaning, reviewing, and analyzing sentencing data.

D. CSOSA Criminal History Information

The Commission deems a sentence compliant with the Guidelines if it falls within the recommended sentencing options and sentencing range set forth in the Guidelines manual or meets certain exceptions. The recommended sentencing options and sentencing range are primarily based upon the offense of conviction and the defendant's criminal history score. For the Commission to assess overall compliance with the Guidelines and to analyze trends, the Commission must have accurate information regarding the convictions being sentenced and the defendant's criminal history score. The latter has proved more difficult to acquire. Over the past two years, due in large part to the efforts of CSOSA, Commission staff has made major strides in ensuring that every criminal history score calculation made by CSOSA is received by the

Commission. As a result, there has been a significant improvement in the quality and availability of criminal history data. In 2011, the Commission received criminal history score calculations in 92% of all felony cases; in 2012, it increased to over 98%. Last year, the Commission received criminal history score calculations in over 99% of all felony cases, missing only those cases in which the court imposed a sentence without an updated presentence report and did not request CSOSA to calculate the defendant's criminal history score. In the fall of 2013, the Commission and CSOSA took another important step forward in ensuring that the Commission receives all reported Criminal History Scores. Every Criminal History Score CSOSA produces, along with accompanying data, now is sent simultaneously to the Superior Court and to the Commission, where it is automatically loaded into the GRID system.

In 2014, CSOSA and the Commission will begin to develop an integrated system that will allow CSOSA to enter criminal history information directly into the GRID system, as well as allow for a bi-directional XML data transfer between the two agencies. The goal of both agencies is to deploy a system that will enable the Commission to have instant access to criminal history data and will allow the Commission to provide sentencing data directly to CSOSA. The Commission is very grateful to CSOSA and its staff for the continued commitment they have made to improve criminal history and sentencing data sharing.

E. Data Requests

In addition to the research and analysis conducted for the Commission's annual report and research papers, Commission staff also responds to data requests from Commission members, Councilmembers, the Mayor's office, other government agencies, organizations, and individuals. After reviewing each request, the Commission makes every effort to provide the information requested in a timely and accurate manner. Some of the recent requests received by the Commission include:

- Providing raw data and analysis on general criminal justice and sentencing trends;
- Providing an analysis of while armed sex offenses sentenced in the past four years;
- Providing the number and percentage of drug convictions between 2011 and 2012;
- Providing information on sentences for all homicide convictions in 2012 and 2013;
- Providing data on defendants convicted of robbery and robbery-related offenses; and
- Providing an analysis and review of general sentencing patterns in 2010.

F. Development of a New Data System

Until the end of 2013, the Commission received sentencing and criminal justice data through a system developed in 2005 called the Sentencing Guidelines System ("SGS"). The SGS received filtered sentencing data from the Superior Court through an XML interface with the Criminal

Justice Coordinating Council's ("CJCC") Justice Information System ("JUSTIS"). In 2011, the Superior Court announced that it was changing the technical manner in which it disseminated information to the Commission and other agencies. Instead of providing filtered information to the Commission via the CJCC JUSTIS system, the Superior Court would provide unfiltered data through the IJIS 12.1 data feed to CJCC's JUSTIS system, which would then disseminate the data to all recipient agencies, including the Commission.

In response to the Superior Court's new data sharing process, in early 2012 the Commission assessed the most effective and cost efficient manner in which it could continue to receive and consume court data. The Commission concluded that developing a new data system would be the most cost effective means to address the Superior Court's switch to the IJIS system, while allowing the Commission to access additional data not available through the SGS. Developing a new data system would also enable the Commission automatically to calculate Guidelines compliance and to conduct more advanced statistical analysis of sentencing data.

After selecting Blueprint Consulting Services as the project vendor, and with the assistance of a contractor acting as a project manager for the Commission, in early 2013, the Commission began developing and implementing its new data system, named the Guidelines Reporting and Information Data system (GRID system). Commission members and staff spent over two thousand hours working with our vendor and other D.C. government agencies to design, build, test, and deploy a data system with advanced reporting and analysis capabilities not otherwise available in the District of Columbia. Through the intensive work of and oversight by the Commission and staff, the GRID system exceeded its base functional requirements and was completed on time and under budget. For more information on the GRID system and its capabilities, see Chapter Three of this report.

Commission staff would like to acknowledge and thank our project manager, Gerry Roth, for his excellent guidance and oversight, ensuring that the design and implementation of the GRID system was successful.

CHAPTER TWO

VOLUNTARY SENTENCING GUIDELINES

The Commission is required to include in its annual report any substantive changes made to the Guidelines the preceding year, including changes in the offense severity rankings, the recommended sentencing options or prison ranges, and the rules for scoring criminal history. If legislation during the year enacts new offenses or changes the penalties for existing offenses, the report must explain how the changes were incorporated into the Guidelines.

In 2013, the Commission enacted policy changes that altered the substance of the Guidelines and technical changes that modified the Guidelines Manual. Many of the technical changes focus on how CSOSA presentence report writers calculate and document a defendant's criminal history score based upon the Guidelines rules and the defendant's complete criminal history. Following the amendments, the Guidelines now provide additional guidance to presentence report writers. Similarly, the Commission made other changes to increase the consistency and transparency of the presentence report writer's initial calculation of a defendant's prior criminal history score.

I. Policy Changes to the Sentencing Guidelines

The Commission modified the Guidelines to allow any party to challenge a presentence report writer's initial scoring of an out-of-District conviction, as explained in Section 2.2.6(a)(6) of the Manual. Previously, the Guidelines only allowed the government to introduce factual evidence that the scoring of an offense misrepresented the severity of the offense. The change allows the defense to present facts and challenge a scoring. The Section also previously referred to the procedure as a "departure principle," technically restricting the subsection's use in cases where the terms of the plea agreement prohibit the defense from asking the judge for a departure. The updated section no longer refers to this as a departure.

The new subsection now reads:

If a party contends that the criminal history score for the out-of-District conviction misrepresents the severity of the offense, then the party may seek a criminal history correction. This procedure applies only to out-of-District convictions. If the court concludes by a preponderance of evidence that the underlying conduct for the out-of-District conviction most closely matches a more or less severe D.C. offense, then the court must apply the same number of criminal history points applicable to the more or less severe D.C. offense. In making this determination, the burden of proof is on the party challenging the initial determination to establish that the conduct for the out-of-District conviction more closely matches a more or less severe D.C. offense. The court should apply the new score only if it determines that the conduct of conviction, as

opposed to the alleged conduct or conduct relating to other offenses, more closely matches the more or less severe D.C. offense.

II. Technical Changes to the Guidelines Manual

A. Substantive Amendments to the Voluntary Sentencing Guidelines and Guidelines Manual

The Commission made the following substantive amendments to the 2013 Guidelines Manual, which the Commission published in June 2013. All references contained in this chapter pertain to the Guidelines Manual.

Chapter 2

1. Section 2.2.3 now specifies when to deem complete a sentence with an unpaid fine for the purpose of calculating a defendant's prior Criminal History Score. Footnote eight states:

The Guidelines deem a sentence as complete at the end of a term of incarceration, probation, and/or supervision. If, at the end of all periods of incarceration, probation, and/or supervision pertaining to a conviction, unpaid fines, fees, and/or restitution remain, the defendant's sentence is considered completed for the purposes of calculating the ten-year window.

2. A footnote was added to Section 2.2.4 to address how a presentence report writer should calculate a juvenile's five-year window when the record states "commitment to DYRS." The Commission received feedback from judges that presentence report writers had been inconsistent in their treatment of juvenile records that state "commitment to DYRS." Some writers treated this as equivalent to commitment at the New Beginnings juvenile facility; however, that is not always accurate. To clarify this, the following footnote has been added:

D.C. juvenile records that state 'commitment to DYRS' or similar language do not indicate placement at New Beginnings. 'Commitment to DYRS' refers to the legal custody DYRS has over the juvenile but does not indicate the physical location of the juvenile during that custody. The five-year window is determined based on the physical location of the juvenile during his/her commitment. If a juvenile is committed to DYRS, the presentence report writer, in completing the PSI, should contact DYRS to determine whether the juvenile has ever been placed at New Beginnings or a locked residential facility. If the juvenile has never been placed at such a facility DYRS should note that fact and report the disposition date. However, if the juvenile has been placed at such a facility, the presentence report writer should ascertain from DYRS and note in the PSI if the juvenile currently resides in such a facility - and note whether such facility is New Beginnings or a locked residential facility - or, if the juvenile is no longer at such

a facility, the date that the juvenile last left such a facility and note whether the facility was New Beginnings or a locked residential facility. If the presentence report writer cannot ascertain the physical location of the juvenile while committed to DYRS, the presentence report writer should note that fact in a footnote in the PSI.

3. The Commission modified Section 2.2.6(a) to instruct CSOSA presentence report writers to add footnotes to presentence reports when an out-of-District offense could match multiple D.C. offenses. The language was added to increase transparency and to notify the parties and the court that the out-of-District offense could match multiple D.C. Code offenses but, in accordance with Section 2.2.6(a), was scored as the least severe offense. Importantly, the footnotes alert the government that they have the option to introduce factual evidence in accordance with Section 2.2.6(a)(6). The proposed language states that “[i]f there is more than one possible D.C. statute that ‘closely matches’ the out-of-District offense, CSOSA should always identify all of the matching offenses in a footnote and indicate that the least severe offense was scored.”
4. Section 2.2.8(a)(2) was rewritten to clarify when an offense remains ranked in the same offense severity group after the statute has been amended to lower the maximum penalty. This subsection previously stated that “if the penalty for the conduct of conviction has been decreased, use the table in Paragraph (b) of this Section, unless doing so places the offense in a lower group, in which case use the group number for the pre-amendment statute” (emphasis added). Some practitioners believed that “lower” meant a Ranking Group lower on the grid, while others believed that “lower” meant a lower numbered Ranking Group, thus higher on the grid. The Ranking Committee expressed similar confusion when reviewing the subsection. The subsection was improved by removing the term “lower” and replacing it with “more severe.” The change removed any ambiguity and follows the general rule that the defendant should receive the benefit from any reduction in penalty.
5. A footnote was added to Section 2.2.11 to specify that for the purposes of determining whether a contempt conviction should be scored as a felony because the sentence exceeded one year, “the sentence imposed includes the term of incarceration and any time suspended. However, it does not include the Supervised Release period or term of probation.”

Chapter 3

1. Section 3.4, footnote 2 was changed to eliminate any reference to the “Youth Act.” The Commission removed the term “Youth Act” from the note to keep the Guidelines consistent with the recent Superior Court opinion that Imposition of Sentencing Suspended (ISS) sentences could be imposed in all cases where the defendant is in a probation eligible box.

Chapter 4

1. Chapter Four now includes a reference to the new Offenses Committed During Release enhancement rule, which was approved by the Commission in the fall of 2012. The new footnote states that “the general rule governing enhancements does not apply to the Offenses Committed During Release (“OCDR”) enhancement (D.C. Code § 23-1328). See Appendix H, § IV for an explanation of how OCDR should be scored.”

Chapter 8

1. The Commission added a new FAQ for presentence report writers addressing how they should score and note out-of-District offenses that match multiple D.C. statutes. The new FAQ reads:

How should a presentence report writer score an out-of-District offense that closely matches multiple D.C. Code offenses (See § 2.2.6(b))?

If an out-of-District offense closely matches more than one D.C. Code offense, the offense should be scored as the least severe matching offense. The presentence report writer should insert a footnote in the presentence report indicating that the out-of-District offense closely matched multiple D.C. Code offenses and was scored as the least severe offense in accordance with DCVGS § 2.2.6(b). The footnote should list all of the matching offenses.

Appendix C/C-I:

1. Appendices C and C-I now contain an entry and explanation for the felony Offenses Committed During Release enhancement (formerly called “Release, Convicted of committing a felony while on”) in accordance with the fall 2012 rule. The Manual now lists the enhancement as a Master Group 9 offense, with two footnotes indicating that:

OCDR (felony) is an enhancement, not a separate offense. However, it operates similarly to a separate offense. Therefore, the Guidelines treat it as if it were a separate offense when determining a defendant’s applicable sentencing range in the instant case for which it was charged and OCDR (felony) is classified as a M9 offense only when it is a charge in the instant case. Because it is technically an enhancement, not a distinct separate offense, it should not be scored as part of a defendant’s prior criminal history score.

2. After several questions from the judges and practitioners, the Commission added a footnote to the Unlawful Possession of a Firearm by a Person with a Prior Conviction Greater than One Year (D.C. Code § 22-4503(a)(1)) entry in Appendices C and C-I. Judges and practitioners have struggled with how to handle defendants convicted of this offense who fall into Master Grid box 7:B, which has a range of 18 to 42 months, prison or short split eligible. However, because the offense has a one-year mandatory

minimum sentence, defendants are not eligible for a short split sentence. Therefore, to be compliant with the Guidelines, the defendant must serve at least 18 months in prison. The footnote now reads:

Defendants convicted of Firearm, Unlawful Possession of by a person with a prior conviction > 1 year with a criminal history score of .75 to 1.75 fall into Master Grid box 7:B with a sentencing range of 18 to 42 months incarceration, prison or short split permissible. However, because of the mandatory minimum 12-month sentence, a short split sentence is not permissible under the Guidelines. The court must sentence the defendant to at least 18 months to impose a Guidelines compliant sentence. If the court determines that a split sentence of 12 months incarceration or more, but less than 18 months, is appropriate, it may sentence accordingly, but this would constitute a departure from the Guidelines. The court should note the reason for the departure on the docket.

Appendix H:

1. The following previously unlisted statutory enhancements were added to Appendix H:
 - a) Identity Theft – Add first degree Against Senior Citizen enhancement (D.C. Code § 22-3227.03(c)) to the Senior Citizen Victim enhancement in subsection I.
 - b) Firearm, Presence in a Motor Vehicle Containing – Add Prior Gun Conviction or Felony enhancement (D.C. Code § 22-2511(c)(2)) to the list of enhancements without multipliers in subsection II.¹⁰
 - c) Unauthorized Use of a Vehicle (“UUV”) - Two or more UUV or Theft – Add first degree convictions enhancement (D.C. Code § 22-3215(d)(3)) to the list of enhancements without multipliers in subsection II.
2. A new subsection, IV, was added to address the Offenses Committed During Release - Felony enhancement rule. The new subsection contains the following entry in accordance with the 2012 rule change:

IV. Offenses Committed During Release - Felony
Score as a M9 offense D.C. Code § 23-1328(a)(1)

Note: While the Court of Appeals has determined that Offenses Committed During Release (OCDR) should be treated as a sentencing enhancement, *Tansimore v. United States*, 355 A.2d 799, 803 (D.C. 1973), it operates more like a separate offense and not like other enhancements covered by Chapter 4 and

¹⁰ The Commission ranked this offense before the District of Columbia Court of Appeals invalidated the statute. See Chapter Seven, section VII *infra*. for more details. The Commission will remove the ranking from future Guidelines materials.

Appendix H of the Guidelines Manual. Unlike those enhancements, which operate to increase the top of the underlying Guidelines range, the Guidelines treat the enhancement as a separate offense with a minimum sentence of 1 year and a maximum sentence of 5 years and rank it in Master Group 9. Additionally, and also unlike other enhancements, OCDR (felony) is exempt from the Guidelines rule that only one enhancement may apply to a count. OCDR (felony) may be applied in conjunction with one other applicable enhancement. A sentence imposed for OCDR must run consecutive to the underlying offense. D.C. Code § 23-1328(c).

Note: The Guidelines do not cover Offenses Committed During Release (misdemeanor).

B. Offenses Ranked in 2013

In addition to the 2013 Guidelines Manual, the Commission also published two Sentencing Guidelines Alerts, one in July and one in December 2013. The first Alert contained changes to the rankings of certain While Armed Sex Offenses; the second Alert contained the rankings of all the applicable terrorism offenses contained in D.C. Code Chapter 21B. The Commission will incorporate these changes into the 2014 Guidelines Manual. The Guidelines sentencing options and prison range for each listed offense can be determined by placing the listed Master Group number into the Guidelines grid contained in Appendix A.

1. Second Degree Sex Abuse While Armed, D.C. Code §§ 22-3003, 22-4502, is ranked in Master Group 4.
2. Third Degree Sex Abuse While Armed, D.C. Code §§ 22-3004, 22-4502, is ranked in Master Group 5.
3. Weapon of Mass Destruction, Manufacture or Possession, D.C. Code § 22-3154(a), is ranked in Master Group 3.
4. Weapon of Mass Destruction, Manufacture or Possession – Attempt or Conspiracy to Commit, D.C. Code § 22-3154(b), is ranked in Master Group 5.
5. Weapon of Mass Destruction, Use, Dissemination, or Detonation, D.C. Code § 22-3155(a), is ranked in Master Group 2.
6. Weapon of Mass Destruction, Use, Dissemination, or Detonation – Attempt or Conspiracy to Commit, D.C. Code § 22-3155(b), is ranked in Master Group 3.
7. Murder in the First Degree as Part of an Act of Terrorism, D.C. Code § 22-3153(a), is ranked in Master Group 1.

8. Murder in the First Degree as Part of an Act of Terrorism While Armed, D.C. Code §§ 22-3153(a), 22-4502, is ranked in Master Group 1.
9. Murder in the First Degree as Part of an Act of Terrorism – Attempt or Conspiracy to Commit, D.C. Code § 22-3153(j), is ranked in Master Group 4.
10. Murder in the First Degree as Part of an Act of Terrorism While Armed – Attempt or Conspiracy to Commit, D.C. Code §§ 22-3153(j), 22-4502, is ranked in Master Group 3.
11. Murder in the First Degree of a Law Enforcement Officer as Part of an Act of Terrorism, D.C. Code § 22-3153(b), is ranked in Master Group 1.
12. Murder in the First Degree of a Law Enforcement Officer as Part of an Act of Terrorism While Armed, D.C. Code §§ 22-3153 (b), 22-4502, is ranked in Master Group 1.
13. Murder in the First Degree of a Law Enforcement Officer as Part of an Act of Terrorism – Attempt or Conspiracy to Commit, D.C. Code § 22-3153(j), is ranked in Master Group 3.
14. Murder in the First Degree of a Law Enforcement Officer as Part of an Act of Terrorism While Armed – Attempt or Conspiracy to Commit, D.C. Code §§ 22-3153(j), 22-4502, is ranked in Master Group 2.
15. Murder in the Second Degree as Part of an Act of Terrorism, D.C. Code § 22-3153(c), is ranked in Master Group 2.
16. Murder in the Second Degree as Part of an Act of Terrorism While Armed, D.C. Code §§ 22-3153(c), 22-4502, is ranked in Master Group 2.
17. Manslaughter as Part of an Act of Terrorism, D.C. Code § 22-3153(d), is ranked in Master Group 4.
18. Manslaughter as Part of an Act of Terrorism While Armed, D.C. Code §§ 22-3153(d), 22-4502, is ranked in Master Group 3.
19. Kidnapping as Part of an Act of Terrorism, D.C. Code § 22-3153(e), is ranked in Master Group 4.
20. Kidnapping as Part of an Act of Terrorism While Armed, D.C. Code §§ 22-3153(e), 22-4502, is ranked in Master Group 3.
21. Kidnapping as Part of an Act of Terrorism – Attempt or Conspiracy to Commit, D.C. Code § 22-3153(j), is ranked in Master Group 5.
22. Kidnapping as Part of an Act of Terrorism While Armed – Attempt or Conspiracy to Commit, D.C. Code §§ 22-3153(j), 22-4502, is ranked in Master Group 4.

23. Assault with Intent to Kill as Part of an Act of Terrorism, D.C. Code § 22-3153(f), is ranked in Master Group 4.
24. Assault with Intent to Kill as Part of an Act of Terrorism While Armed, D.C. Code §§ 22-3153(f), 22-4502, is ranked in Master Group 3.
25. Mayhem/Malicious Disfigurement as Part of an Act of Terrorism, D.C. Code § 22-3153(g), is ranked in Master Group 5.
26. Mayhem/Malicious Disfigurement as Part of an Act of Terrorism While Armed, D.C. Code §§ 22-3153(g), 22-4502, is ranked in Master Group 4.
27. Mayhem/Malicious Disfigurement as Part of an Act of Terrorism – Attempt or Conspiracy to Commit, D.C. Code § 22-3153(l), is ranked in Master Group 6.
28. Mayhem/Malicious Disfigurement as Part of an Act of Terrorism While Armed – Attempt or Conspiracy to Commit, D.C. Code §§ 22-3153(l), 22-4502, is ranked in Master Group 5.
29. Arson as Part of an Act of Terrorism, D.C. Code § 22-3153(h), is ranked in Master Group 5.
30. Arson as Part of an Act of Terrorism While Armed, D.C. Code §§ 22-3153(h), 22-4502, is ranked in Master Group 4.
31. Arson as Part of an Act of Terrorism – Attempt or Conspiracy to Commit, D.C. Code § 22-3153(l), is ranked in Master Group 6.
32. Arson as Part of an Act of Terrorism While Armed – Attempt or Conspiracy to Commit, D.C. Code §§ 22-3153(l), 22-4502, is ranked in Master Group 5.
33. Destruction of Property (>\$500,000) as Part of an Act of Terrorism, D.C. Code § 22-3153(i), is ranked in Master Group 5.
34. Destruction of Property (>\$500,000) as Part of an Act of Terrorism While Armed, D.C. Code §§ 22-3153(i), 22-4502, is ranked in Master Group 4.
35. Destruction of Property (>\$500,000) as Part of an Act of Terrorism – Attempt or Conspiracy to Commit, D.C. Code § 22-3153(l), is ranked in Master Group 6.
36. Destruction of Property (>\$500,000) as Part of an Act of Terrorism While Armed – Attempt or Conspiracy to Commit, D.C. Code §§ 22-3153(l), 22-4502, is ranked in Master Group 5.

37. Providing Material Support or Resources for an Act of Terrorism, D.C. Code § 22-3153(m), is ranked in Master Group 5.
38. Providing Material Support or Resources for an Act of Terrorism While Armed, D.C. Code §§ 22-3153(i), 22-4502, is ranked in Master Group 4.
39. Soliciting Material Support or Resources for an Act of Terrorism, D.C. Code § 22-3153(n), is ranked in Master Group 6.
40. Soliciting Material Support or Resources for an Act of Terrorism While Armed, D.C. Code §§ 22-3153(n), 22-4502, is ranked in Master Group 5.

CHAPTER THREE

OVERVIEW OF AGENCY DATA SOURCES AND COLLECTION PROCEDURES

The Commission's new Guidelines Reporting Information Data (GRID) system enables the Commission to analyze criminal justice data more efficiently and determine judicial compliance with the Sentencing Guidelines. The GRID system utilizes data from three sources: the Superior Court of the District of Columbia (Superior Court), the Court Services and Offender Supervision Agency (CSOSA), and individual Superior Court judges. First, the Superior Court provides the Commission each day with all offense, conviction, and sentencing-related data via an electronic transmission. Second, CSOSA provides the Commission with offender criminal history information. Finally, individual judges provide the Commission with information that relates to cases that Commission staff initially classify as non-compliant with the Guidelines.

I. The GRID System

Prior to 2012, the Commission used a data system called the Sentencing Guidelines System (SGS). The SGS data system received 26 sentencing-related data variables from the Superior Court. The Superior Court transferred the data to the Commission through an XML interface via the Justice Information System (JUSTIS). JUSTIS is a data-sharing network operated by the Criminal Justice Coordinating Council (CJCC), used by partner criminal justice agencies. Conviction and sentencing data were sent to the Commission only after a plea or verdict occurred in a case. These data were imported to the Commission's database and integrated into the appropriate offender/case record. Information on felony cases prior to a plea or verdict was not available to the Commission.

In the fall of 2011, the Superior Court announced that it was changing how it shared data with partner criminal justice agencies. The Superior Court implemented a new information system, Integrated Justice Information System (IJIS) Outbound 12.1. With IJIS Outbound 12.1, agencies pulled data directly from JUSTIS; this process allows JUSTIS to provide recipient agencies with an unfiltered data transfer (508 data variables and attributes) from the Superior Court. As a result, recipient agencies were required to make technical changes to their respective data systems to continue receiving Superior Court data.

Since SGS was designed to consume only 26 filtered sentencing-related data variables from the Superior Court via the interface with JUSTIS, the technical design of the Commission's legacy data system was not compatible with the IJIS 12.1 design. Therefore, in order to maintain data sharing capabilities with the Superior Court, the Commission was required to modify or replace its SGS system.

A. Development and Implementation of the GRID System

Given the change in the court's technology, retaining compatibility with the agency's primary data source was a priority for the Commission. Consuming many of the additional 508 data variables and attributes would also enable the agency to undertake a more comprehensive analysis of sentencing trends and practices, as well as to evaluate the effectiveness of the Guidelines. The Commission undertook a three-phase approach in developing a new data system:

Phase I – Needs Assessment

In the spring of 2012, the Commission contracted with an independent vendor to undertake a Needs Assessment to determine whether it would be feasible and cost effective to enhance the legacy data system to ensure compatibility with the IJIS Outbound communication or whether a brand new system should be developed. The Needs Assessment identified three options for the Commission's consideration: (1) modify the current data system; (2) buy an off-the-shelf system and adapt it to the agency's business needs; or (3) develop a new data system. After reviewing the information provided, the Commission determined that based on cost, risk, and functionality, developing a new data system would best address both the current and future data needs of the agency.

Phase II – Design and Development of a New Data System

In May of 2012, the Commission, working with a Project Manager, began developing a request for proposal (RFP) that clearly identified both the business needs and technical requirements of the Commission's new data system. The RFP was released for competitive bidding in September 2012. After receiving and evaluating submitted proposals, the agency awarded a fixed price contract to Blueprint Consulting Services on December 21, 2012.

The data system development officially began on January 10, 2013. Funding for the project was provided through a FY 2013 Capital Budget request. To minimize the costs associated with development of the agency's new system, the Commission entered into an inter-agency agreement with the Pretrial Services Agency (PSA) to utilize PSA's existing database structure. PSA had recently completed modifications to their own database structure to ensure compatibility with IJIS 12.1 data and agreed to share their source code for the XML used to extract Superior Court data. The use of PSA's database structure reduced the overall cost of the project. In addition, incorporating the PSA database design into the development of the GRID system permitted the Commission to obtain historical data from PSA that complements the new IJIS 12.1 data.

Phase III – Implementation of the GRID System

The GRID system was developed as a web-based application, through which the Commission can capture sentencing information, calculate Guidelines compliance, and perform numerous types of data analysis. It is an independent, internet technology-based system and access to the application is provided through the secure JUSTIS network.

The GRID system was implemented utilizing a four-step process to ensure the functionality of each individual component of the system prior to the completion and deployment of the entire system. The data system was designed to incorporate an agile development process that allowed for the continual testing of technical and functional issues and incorporated agency feedback throughout the development and implementation process.

The four steps of implementation included:

1. Base technical and business processes, which included providing case and offender information, base statistical analysis capabilities, and administrative security controls;
2. Enhanced technical and business processes, including the development of algorithms to determine judicial compliance, ad hoc statistical analysis capabilities, and incorporation of all felony charge codes;
3. Automated transfer of criminal history information from CSOSA through an XML interface and integration of data directly into the GRID system, including the automatic calculation of judicial compliance; and
4. Full system functionality with tested and verified enhancements.

Throughout this process, the agency performed ongoing testing of each individual component of the system and made adjustments as needed prior to the completion of the system. The GRID system was deployed as a fully functional system on December 20, 2013.

II. Sentencing Data

All Superior Court data from arrest through sentencing is provided to the Commission through the IJIS 12.1 data feed, which includes all case changes and updates as a defendant proceeds through the judicial process. The GRID system uses the data for analysis of sentencing information by offender, case, and count. The IJIS data feed contains 508 data variables resulting in 232 unique data elements. In addition, using historic sentencing data available from

the PSA database, the Commission is able to analyze sentencing trends and changes over time to identify the impact of policy changes or potential modifications to the sentencing guidelines.

III. Criminal History Data

A defendant's Criminal History Score (CH Score) is one of two primary factors used to determine a defendant's recommended Guidelines structure for every felony conviction. CSOSA calculates each defendant's CH Score as part of the Pre-Sentence Investigation Report. The CH Score is calculated based on a defendant's prior criminal convictions within and outside of the District of Columbia. Prior felony and most misdemeanor convictions, as well as recent juvenile adjudications, are factored into each defendant's CH Score.

Prior to the implementation of the GRID system, CH Scores were transferred from CSOSA to the Commission through a digital form, called the Sentencing Guideline Form that was e-mailed to the Commission. After the Commission received the Sentencing Guideline Form, the CH calculation was converted to an Excel spreadsheet and manually inputted into the agency's database. Although this process was an improvement over prior data transfer methods, it still required significant staff resources and had the potential for human error.

With the implementation of the GRID system, the completed Sentencing Guideline Forms are transmitted electronically from CSOSA through an XML interface to the GRID system, where the offender's CH Score is automatically matched by case number and merged with the IJIS 12.1 data from Superior Court to create a complete sentencing record. This process ensures that all CH Score information is captured in an accurate, timely, and comprehensive manner, thus reducing the number of cases missing CH Score information and the number of cases initially marked as non-compliant sentences.

IV. Compliance Data

When a sentence falls within the recommended Guidelines range and options, the sentence is deemed compliant with the Guidelines. The Guidelines utilize two grids, the Master Grid and the Drug Grid, as tools to determine a defendant's recommended range and available sentencing options based upon the CH Score of the defendant and the offense of conviction (see Chapter Five for more details on calculating Guidelines compliance). If a felony sentence is initially determined to be non-compliant, the sentence is evaluated further using a number of different factors to access if the sentence is compliant for other reasons. The Commission uses a seven-step process to determine if the sentence imposed is actually compliant with the Guidelines. Prior to the implementation of the GRID system, the seven-step process was performed manually by Commission staff. The GRID system now has the capability to automatically perform the first five steps of the Commission's seven-step compliance process. The two remaining steps,

which were necessary in less than 7% of all counts sentenced in 2013, are still performed by staff.

A. The Seven-Step Process to Determine Judicial Compliance

Step 1 - Identify Felony Offenses

The Sentencing Guidelines only apply to felony convictions, therefore, compliance is not calculated for misdemeanor and other minor offenses. The GRID system contains the functionality to determine if each count in a case is a felony, misdemeanor, traffic, or other type of offense based upon the offense's charge code. If the GRID system does not recognize a charge code, the system will automatically generate a notification. Staff then reviews the offense and updates the system if necessary. If the case contains at least one felony count, the process then proceeds to step 2.

Step 2 - Determine the Appropriate Grid Box

The GRID system computes compliance for every felony count sentenced. Compliance is determined automatically based upon the Guidelines Master Grid or Drug Grid, depending on whether or not the offense is drug-related. Each grid uses the predetermined severity level for the offense of conviction and the CH Score of the defendant to determine the recommended type of sentence, as well as the recommended sentence length. If a sentence falls within the appropriate range, as designated by the applicable Guidelines grid, then the sentence is deemed compliant with the Guidelines. If the sentence does not fall within the appropriate sentence type or sentencing range, the process then proceeds to step 3.

Step 3 - Determine if the Sentence Runs Concurrent with Another Count

An otherwise non-compliant sentence may still be compliant with the Guidelines if it runs concurrently with a greater or equal compliant sentence for a count within the same case. For this to happen, both sentences must be eligible to run concurrently under the Guidelines.¹¹ In an eligible case containing multiple counts, if the non-compliant sentence runs concurrent with an equal or longer compliant sentence, then the otherwise non-compliant sentence is deemed to be a compliant outside-of-the-box sentence, since it would not increase or decrease the prison term associated with the compliant sentence. The GRID system reclassifies the sentence as compliant because the longest sentence among concurrent counts determines the length of time a defendant

¹¹ Chapter Six of the Guidelines Manual discusses which sentences may not run concurrently. For example, two crimes of violence committed against two separate people cannot run concurrent to each other. Similarly, two crimes of violence against one person but occurring as part of two separate events cannot run concurrent with each other.

will actually serve. If the sentence does not run concurrent to another or if the longest count is non-compliant, the process then proceeds to step 4.

Step 4 - Determine if the Sentence is the Result of an Appropriate Departure or a Statutory Enhancement

There are several instances when an otherwise non-compliant sentence is compliant with the Guidelines because of an additional factor. When a sentencing judge imposes a non-compliant sentence but selects an enumerated departure reason, the sentence is deemed a compliant departure. If the court records the departure reason, the GRID system will automatically mark the sentence as a compliant departure and record the reason for the departure. Sentences above the regular Guidelines range that are the result of a statutory enhancement are also deemed to be compliant, if the sentence falls within the expanded range.¹² The GRID system incorporates enhancements into its calculations when the Superior Court reports them in the IJIS 12.1 feed. Non-reported enhancements are verified and manually entered into the GRID system by Commission staff. If a departure does not exist or an enhancement does not apply, the process then proceeds to step 5.

Step 5 - Determine if the Sentence is the Result of a Special Circumstance

Certain special factors can change how a sentence is treated under the Guidelines. For example, sentences following a Rule 11(e)(1)(C) plea bargain, a plea or verdict entered before the Guidelines were implemented, or a probation revocation are treated differently from other sentences. The GRID system classifies all 11(e)(1)(C) sentences as compliant, regardless of the actual agreed upon sentence. At the time the Guidelines were created, the Commission made a policy decision to deem all Rule 11(e)(1)(C) sentences as compliant because the sentence was agreed to before the defendant's criminal history score was calculated. Although such cases are increasingly rare, the Guidelines do not apply to a sentence from a plea or verdict before June 14, 2004. Therefore, the GRID system automatically deems these sentences as "non-guideline applicable" sentences. The GRID system also checks the compliance status of sentences following a probation revocation. However, for data analysis purposes, these sentences are separated out and not used to calculate the overall compliance rate.¹³ If one of the above conditions does not apply, the process then proceeds to step 6.

¹² Chapter Four and Appendix H of the Guidelines Manual address expanding the Guidelines range based upon a statutory enhancement. For example, if a gun offense is committed in a designated "gun-free zone," the upper limit of the Guidelines range is doubled.

¹³ Probation revocation sentences are not included in the overall Guidelines compliance rate because they would result in compliance being calculated twice for the same case and count, once when the sentence was initially imposed, and once again when probation is revoked.

Step 6 - Verification of Non-Compliance

If, after completion of the five initial steps outlined above, a sentence still appears to be non-compliant, the conviction and the defendant's information is manually reviewed to verify that the data upon which the GRID system performed its evaluation are valid and that there are no data quality issues present. Additionally, sentencing compliance is rechecked using data from an alternate source: the CJCC Justice Information System. Commission staff is often able to supplement the record by reviewing official court documents available through the Justice Information System. If the sentence is still non-compliant after the information is verified, one final step must be taken.

Step 7 - Departure Letters

For sentences that remain non-compliant after the previous six steps are completed, the Commission sends an electronic form to the sentencing judge to verify the sentencing data upon which the judge sentenced the defendant and to inquire as to whether the judge intended to impose a non-compliant sentence. The form allows the judge to easily update or correct any information regarding the case. For example, if the defendant's CH Score was changed during the sentencing hearing, the judge may provide the updated CH Score. The sentencing judge may also provide a reason for selecting one of the catch-all compliant departure factors or for intentionally imposing a non-compliant sentence. Once completed, the form is automatically sent back to Commission staff where the information is entered into the GRID system to complete the record.

V. Conclusion

Over the past year, with the implementation of the GRID system, the Commission has significantly improved and expanded both the quality and quantity of information it uses to analyze sentences and to calculate compliance with the Guidelines. Use of the GRID system ensures that the Commission can consume the IJIS 12.1 data necessary to monitor and analyze sentencing trends. In the future, the increased number of data elements available will allow for an enhanced analysis of sentencing practices in the District. It will also provide the basis for a comprehensive evaluation of the impact and effectiveness of the Guidelines.

The ability of the GRID system to electronically receive CH Score information from CSOSA further enhances the Commission's capacity to develop a comprehensive sentencing record for each defendant convicted of a felony offense and automatically calculate judicial compliance with the Guidelines. Overall, since the implementation of the GRID system, there has been a significant improvement in the Commission's data collection, processing, and analysis capabilities.

As a result of the comprehensive data now available to the Commission, and with the notable improvements to its analytical capabilities, comparison between the data and findings in this year's report and those in past years may not be appropriate. Findings from prior years, made with the limited data available through the agency's legacy data system, may be inconsistent with data presented in this year's report. With the comprehensive data now available for analysis, the Commission has the ability to undertake more in-depth analysis that refines many of the previous findings.

Moving forward, the Commission will continue to implement processes and procedures that improve access to sentencing data and the overall quality of the data used for analysis of sentencing practices. Ensuring the validity and reliability of the data will enable the Commission to more effectively monitor the application of the Guidelines and identify specific areas for potential modification or revision. This will further the Commission's goal of making data-driven policy decisions.

CHAPTER FOUR

SENTENCING DATA AND ANALYSIS

This chapter includes an analysis of felony sentences imposed in the District of Columbia during calendar year 2013. The data used in the analysis includes all felony convictions sentenced by the Superior Court from January 1, 2013, to December 31, 2013, irrespective of offense date, the date of plea, or the date of verdict. Sentences for misdemeanor offenses (offenses with a maximum penalty of one year or less incarceration) are not included in this report given that the Guidelines only apply to felony sentences.

The analysis examines felony sentencing patterns by offender characteristics, sentence type, and offense type to provide an overview of both the types and frequency of sentences imposed under the Guidelines. A comparison of findings from 2011, 2012, and 2013 is also included to highlight any potential sentencing trends and changes in sentencing practices.

When analyzing sentencing patterns, it is important to examine sentences imposed at both the case and count level. Given that a defendant may be sentenced on multiple counts within a single case, the number of counts will exceed the number of cases. Count level analysis provides an overview of criminal behavior resulting in convictions and sentences arising from a single offense.

With the inception of the agency's new GRID system, there have been four major changes to the way the Commission classifies and analyzes its data.

- i. Counts in a case are now graded based their offense severity group, followed by sentence length, and then by offense type. This allows for the appropriate identification of the most severe count in each case. In prior years, the Commission based case level analysis only on the count receiving the longest sentence.
- ii. The Commission also now uses the most severe count calculation described above to determine each offender's most severe count. Previously offender analysis was also undertaken based on the count receiving the longest sentence.
- iii. The Commission now designates homicide as its own offense category.¹⁴ In prior years, the Commission included homicide as a subcategory within violent offenses. Homicide was reclassified due to the seriousness of the criminal behavior usually associated the offense, the fact that the offense results in the loss of a human life, and because sentences imposed for the offense are typically severe and lengthy. Classifying homicide as its own offense category prevents the offense from skewing the overall findings for violent offenses.

¹⁴ The homicide offense group includes offenses that result in the taking of a human life. Specific offenses included are Felony Murder, Murder I, Murder II, Voluntary Manslaughter and Involuntary Manslaughter.

- iv. Beginning in 2013, sentences classified as prison sentences include long split¹⁵ sentences. Unlike probation and short split sentences, long split sentences operate more like prison sentences because, by definition, a compliant long split sentence will require the defendant to serve at least the minimum prison term in the applicable Guidelines range. The three sentence types are now prison (which includes prison and long splits), probation, and short splits.¹⁶ Formerly, split sentences included both long splits and short splits.

These changes, and the comprehensive data now available through the GRID system, account for some of the discrepancies in the Commission's findings from previous years. The new data reporting changes allow for a more accurate analysis of sentencing practices and trends within the District. This report uses Data from 2011 and 2012 for comparison purposes. Adjustments have been made to the 2011 and 2012 data as a result of the increased capabilities of the GRID system.

I. Sentencing Structure

Sentences imposed under the Sentencing Guidelines are based on two grids: the Master Grid for non-drug offenses and the Drug Grid for drug offenses.¹⁷ These grids are comprised of two axes: one for the Criminal History Score (CH Score) of the offender, and the other for Offense Severity Group (OSG) of each offense for which a sentence is imposed. There are five classifications of CH Scores (A to E)¹⁸ on the horizontal axis of the grids in which an offender may be classified, with "A" representing the lowest criminal history score and "E" representing the highest. In order to determine offense severity, the grid classifies offenses into nine OSGs represented on the vertical axis of the Master Grid, which decrease in severity from M1 to M9, and four OSGs from D1 to D4 on the Drug Grid. The Commission places all felony offenses into one of the OSGs according to the level of seriousness associated with the respective offense. The intersection of an offender's CH Score on the horizontal axis and OSG on the vertical axis determines the recommended sentencing option - prison only, short split, or probation - and identifies the range of months for prison sentences.

¹⁵ A long split sentence is one where the court imposes a prison sentence and suspends execution of some of the sentence but requires the defendant serve longer than six months in prison and then places the defendant on probation for a period of up to five years. A long split sentence is compliant under the Guidelines in every box if the prison term to be served is at least as long as the minimum prison term in that box.

¹⁶ A short split sentence is a prison sentence in which the court suspends execution of all but six months or less - but not all - of that sentence, and imposes up to five years' probation to follow the portion of the prison term to be served.

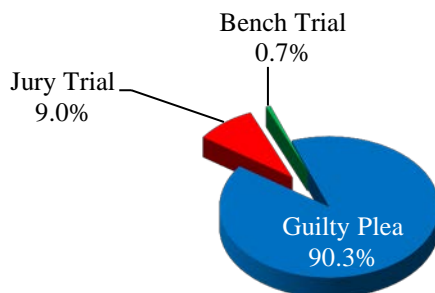
¹⁷ See Appendices A and B for the Master Grid and the Drug Grid.

¹⁸ The classifications of CH Scores are as follows: A - 0 to 1/2, B - 3/4 to 1 3/4, C - 2 to 3 3/4, D - 4 to 5 3/4, and E - 6+.

II. Felony Sentences Imposed in 2013

In 2013, the Commission recorded 2,106 felony cases sentenced, consisting of 2,895 individual felony counts. Of the 2,106 felony cases, there were 386 multiple count cases and 1,720 single count cases, indicating that vast majority of felony cases sentenced are single count. The total number of cases and counts sentenced in 2013 decreased by 413 cases and 849 counts from 2012 and 536 cases and 794 counts from 2011. These findings indicate a slight declining trend in the number of felony cases and counts sentenced over the past three years and follows the decline in the number of felony cases filed in D. C. Superior court during the same time period.¹⁹ Figure 1 shows the percentage of cases disposed by guilty plea, jury trial, and bench trial.

Figure 1: Types of Disposition in 2013, by Case



N = 2,106

As in previous years, the vast majority of all felony cases (90.3%) were disposed of through guilty pleas. Of the remaining cases, 9% of all convictions resulted from jury trials, and 0.7% resulted from bench trials.

A. Sentence Type

Under the Guidelines, there are three types of felony sentences that can be imposed: prison,²⁰ short split,²¹ and probation.²² Figures 2a and 2b show that prison (65% by case and 70.8% by

¹⁹ The District of Columbia Courts 2013 Statistical Summary reports that in calendar year 2011, 4,305 felony cases were initiated, 3,618 were initiated in 2012, and 3,440 were initiated in 2013.

²⁰ A prison sentence is a sentence where the judge sentences the defendant to serve the entire sentence incarcerated. A long split sentence is one where the court imposes a prison sentence and suspends execution of some of the sentence, but requires the defendant to serve longer than six months in prison and then places the defendant on probation for a period of up to five years. A long split sentence is compliant under the Guidelines in every box if the prison term to be served is at least as long as the minimum prison term in that box. Beginning in 2013, the Commission classifies long split sentences as prison.

²¹ A short split sentence is a prison sentence in which the court suspends execution of all but six months or less - but not all - of that sentence, and imposes up to five years' probation to follow the portion of the prison term to be served.

²² A probation sentence is a sentence in which the court suspends the execution of the entire prison sentence and imposes up to five years' probation.

count) was the most frequent sentence type imposed, followed by probation (19% by case and 14.9% by count) and then short split sentences (16% by case and 14.3% by count).

Figure 2a: Sentence Type by Case

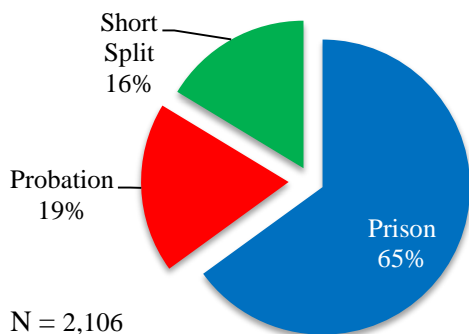
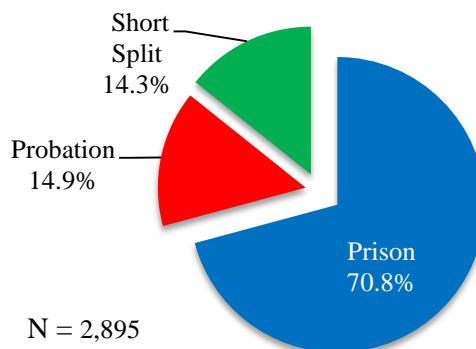


Figure 2b: Sentence Type by Count



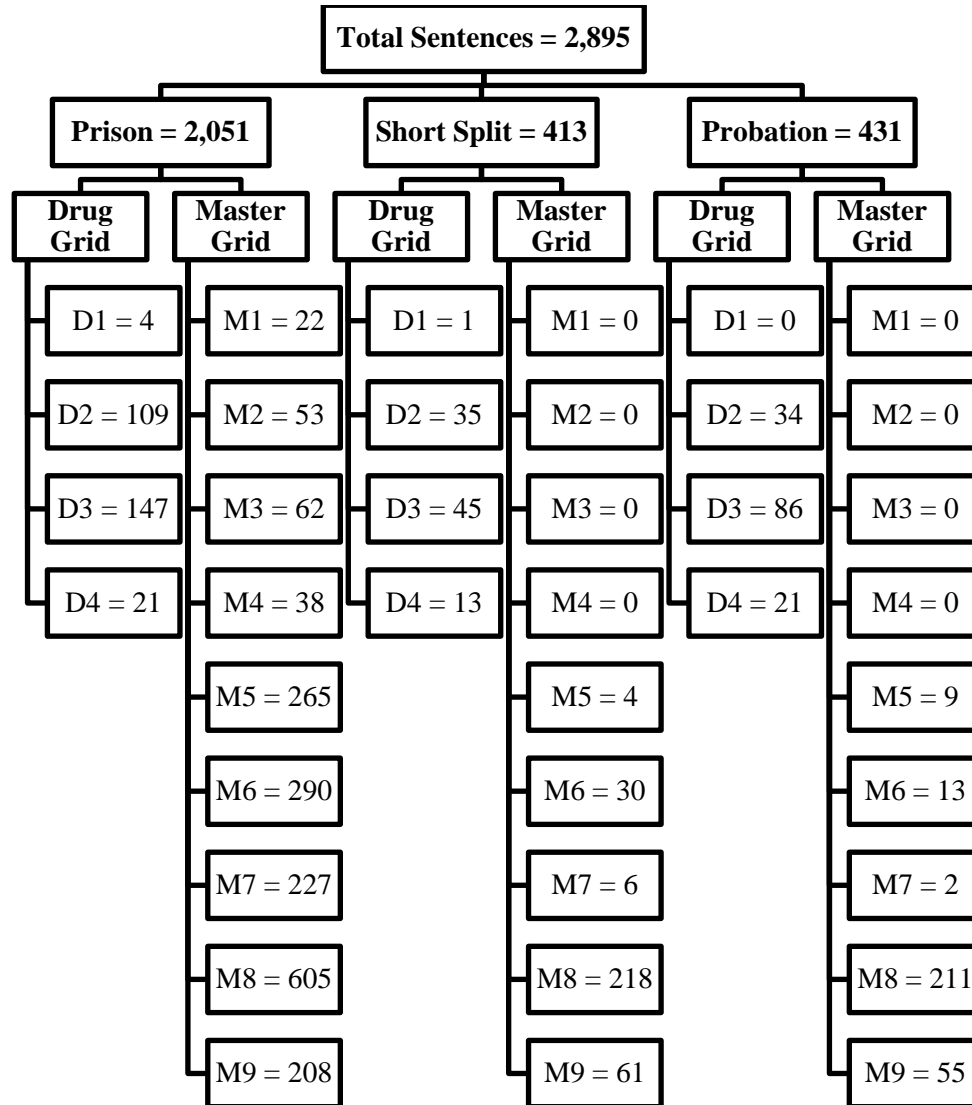
The high proportion of prison sentences is consistent with the structure of the Guidelines, which allow for a prison sentence for any felony conviction, regardless of the defendant's CH Score or OSG.²³ Compliant short split or probation sentences can only be imposed in specific grid boxes. Probation and short split sentences are generally reserved as sentencing options for relatively less severe offenses and/or for offenders with limited criminal history. In addition, some serious and violent offenses are also subject to mandatory minimum sentencing provisions that require the imposition of a specific prison term.

²³ See page 63 for a detailed explanation of the structure of the Guidelines.

B. Drug and Non-Drug Offenses

Figure 3 presents the distribution of types of sentences imposed by count for each OSG on the both the Master and Drug Grid.

Figure 3: Convictions by Offense Group



In 2013, the highest number of felony sentences imposed was in OSG M8 and D3, accounting for 45.3% of the total number of sentences by count. Group M8 alone represented the highest percentage of all sentences for the year (35.7%), and it accounted for the broadest distribution of sentences across all three sentence types. This finding is similar to, but slightly higher than, the percent of OSG M8 sentences imposed in 2012 (30%) and in 2011 (27.8%).

C. Classification of Offense Categories

Similar to the structure of the Guidelines, all felony offenses reported to the Commission are classified into drug and non-drug offense categories. The non-drug offenses are further subdivided into six offense categories for more detailed analysis of the offenses. Listed below are the offense categories and the most common offenses within each category:

- Drug offenses: distribution or possession with intent to distribute a controlled substance; attempted distribution or attempted possession with intent to distribute a controlled substance; and drug offenses while armed.
- Non-Drug offenses:
 - Homicide: first degree murder, felony murder, second degree murder, and voluntary and involuntary manslaughter;
 - Violent offenses: armed and unarmed robbery, assault with a deadly weapon, aggravated assault, carjacking, and kidnapping;
 - Sex offenses: all degrees of sex abuse, child sex abuse, and prostitution-related crimes;
 - Property offenses: arson, first degree burglary, second degree burglary, first degree theft, felony receiving stolen property, unauthorized use of a vehicle, fraud, and forgery;
 - Weapon offenses: carrying a pistol without a license, unlawful possession of a firearm (felon in possession of a firearm), and possession of a firearm during a crime of violence (“PFDCV”)²⁴; and
 - Other offenses: escape, fleeing law enforcement, obstruction of justice, and Bail Reform Act (“BRA”) violations.²⁵

Overall, non-drug offenses represented approximately 79% of cases and 82% of counts 2013, with drug offenses accounting for only 21% of the cases and 18% of counts. As shown in Figures 4a and 4b, violent offenses accounted for the largest offense category by case and by count, 26.4% and 24.9% respectively. Sex offenses represented the least common offense type by case (2.4%) and count (2.5%), accounting for only slightly more than 2% of all felony sentences.

²⁴A PFDCV conviction has a 60-month mandatory minimum prison sentence. Because the Guidelines take mandatory minimums into account, sentences imposed for PFDCV increase the compliance rate as well as the incarceration rate for Weapons offenses. Among all sentences imposed by count for Weapon offenses, 30% were for PFDCV.

²⁵ A BRA conviction is the result of a defendant failing to return to court as required. D.C. Code § 23-1327(a) (2013).

Figure 4a: Offense Type by Case

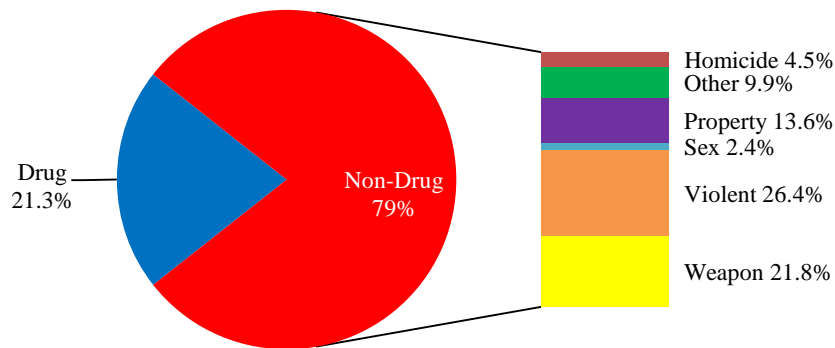
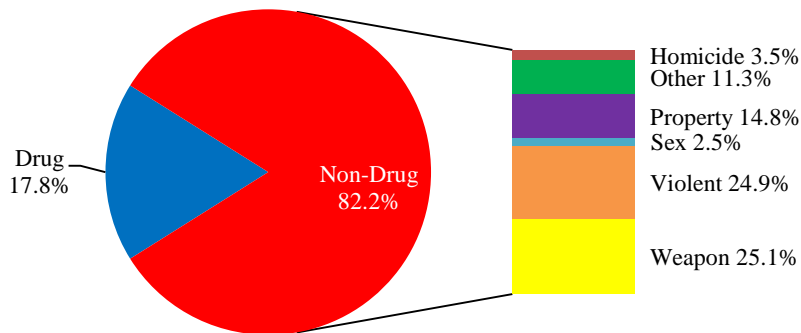


Figure 4b: Offense Type by Count



The number of drug offenses sentenced has demonstrated a continuing decline since 2011. The total number of drug offenses (516) sentenced in 2013 represents a decrease of 44% from 2012 and 54.8% from 2011. The notable decrease in drug sentences contributes significantly to the total decline in cases and counts sentenced in 2013.

D. Type of Sentence Imposed for Drug and Non-Drug Offenses

1. Prison Sentences

The overall number of prison sentences imposed by count in 2013 dropped significantly from previous years. In 2013, 2,051 counts received a prison sentence, down from 2,849 in 2011 and 2,691 in 2012. The drop in counts sentenced to prison is similar to the overall drop in the number of counts sentenced over the same period.²⁶ However, the percentage of prison versus non-prison sentences has remained relatively constant from year to year.

²⁶ In 2013, 2,895 felony counts were sentenced, compared to 4,079 in 2011 and 4,040 in 2012.

The data presented in Figures 5a and 5b show the proportion of all prison sentences (case and count) by drug and non-drug offenses. Prison sentences were imposed for a significantly higher proportion (over 80 %) of non-drug offenses than drug offenses by both case and count.

Figure 5a: Drug and Non-Drug Prison Sentences, by Case

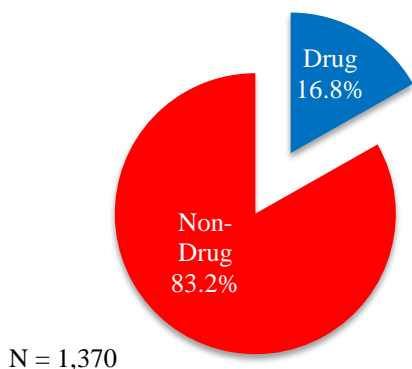
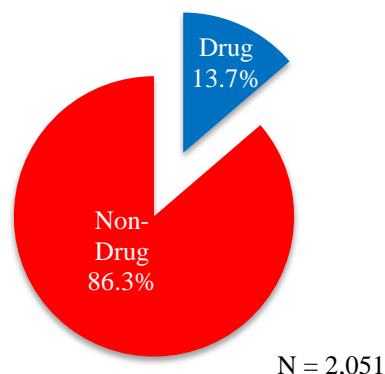


Figure 5b: Drug and Non-Drug Prison Sentences, by Count



Defendants sentenced for non-drug offenses, particularly violent offenses, were sentenced to prison more frequently than those sentenced for drug offenses. The rate of prison sentences for violent offenses was 72% by case and 76.9% by count, which is very similar to the percentage of prison sentences, 71.6% by case and 79.8% by count, imposed for violent offenses in 2012. However, prison sentences for violent offenders in 2013 showed a decline of over ten percentage points from 2011 (86.6% by case and 89.5% by count).

Prison sentences accounted for 51.4% by case and 54.5% by count of sentences for drug offenses in 2013, representing about a six percentage point decline from 58.8% by case and 60.4% by count in 2012. The percentage of prison sentences for drug offenses in 2011, 57.9% by case and 58.4% by count, was fairly close to the percentages found in 2012.

Since the average CH Score of violent offenders (1.4) and drug offenders (1.7) is roughly comparable, the difference in sentences imposed for violent and drug offenses is primarily attributable to the severity of the offense, as reflected in the Guidelines. The higher rate of prison sentences for non-drug offenses is not surprising given that violent offenses are generally located in more severe OSGs for which the Guidelines designate a prison only sentence, as opposed to drug offenses, for which 50% of the grid boxes are probation eligible.²⁷

²⁷ Ten out of 20 grid boxes in the Drug Grid are probation eligible, as opposed to only six out of 45 grid boxes in the Master Grid.

2. Short Split Sentences

In 2013, short split sentences were imposed in only 344 cases and 413 counts. The percentage of short split sentences imposed for drug and non-drug offenses was comparable by both case and count.

Figure 6a: Drug and Non-Drug Short Split Sentences, by Case

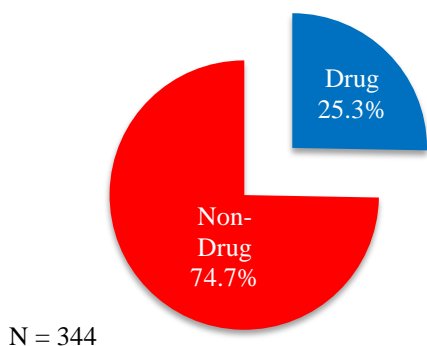
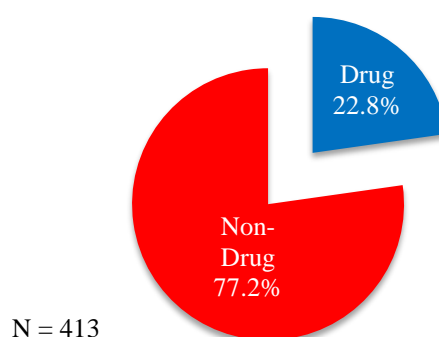


Figure 6b: Drug and Non-Drug Short Split Sentences, by Count



Short split sentences are eligible in more grid boxes in the Drug Grid (70% of the boxes) as compared to the Master Grid (22% of the boxes). As expected, drug offenses account for a larger proportion of short split sentences than prison sentences, when compared to non-drug sentences on the Master Grid.

3. Probation Sentences

Probation sentences exhibit a slightly different pattern from prison or short split sentences. Figures 7a and 7b reveal that the difference between the percentage of drug and non-drug probation rates is less than for prison or short split sentences. Drug offenders were also more likely to be sentenced to probation than any other sentence type.

Figure 7a: Drug and Non-Drug Probation Sentences, by Case

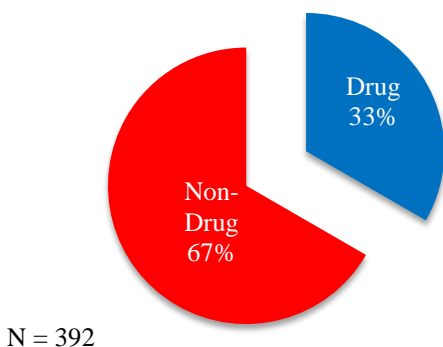
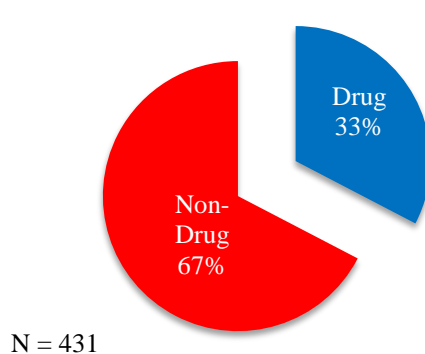


Figure 7b: Drug and Non-Drug Probation Sentences, by Count



When drug and non-drug offenses are divided into individual offense categories - drug, homicide, violent, sex, property, weapon, and other - the probation rate for drug offenses vastly exceeded that of any other single non-drug offense category. Since the structure of the Drug Grid allows for the imposition of a term of probation in more grid boxes than is allowed on the Master Grid, a higher percentage of drug offenses receiving a term of probation would be expected.

E. Type of Sentence Imposed Across Offense Categories

Figures 8a and 8b examine the type of sentence imposed for the different offense categories by case and count, respectively.

Figure 8a: Sentence Type Imposed on Offense Categories, by Case

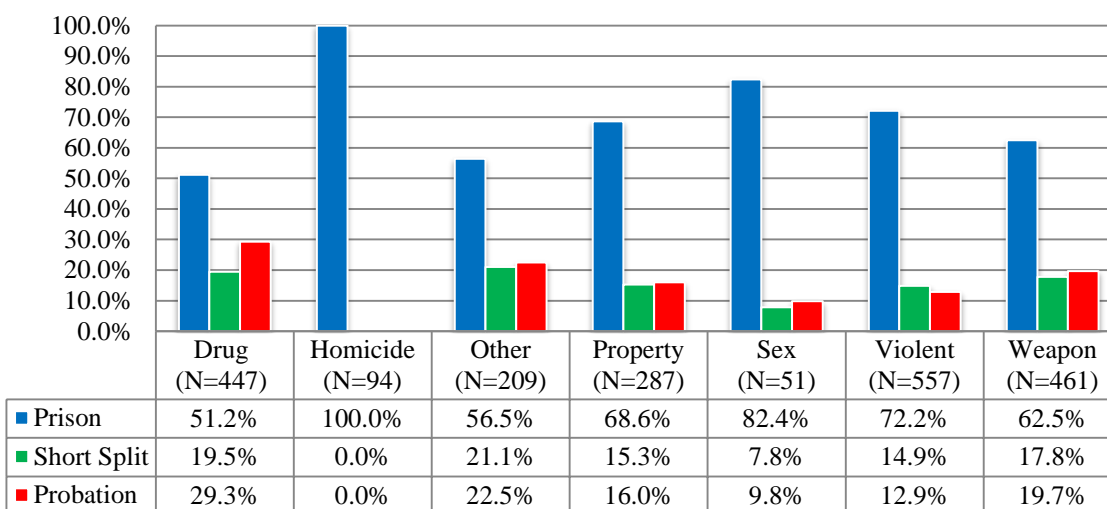
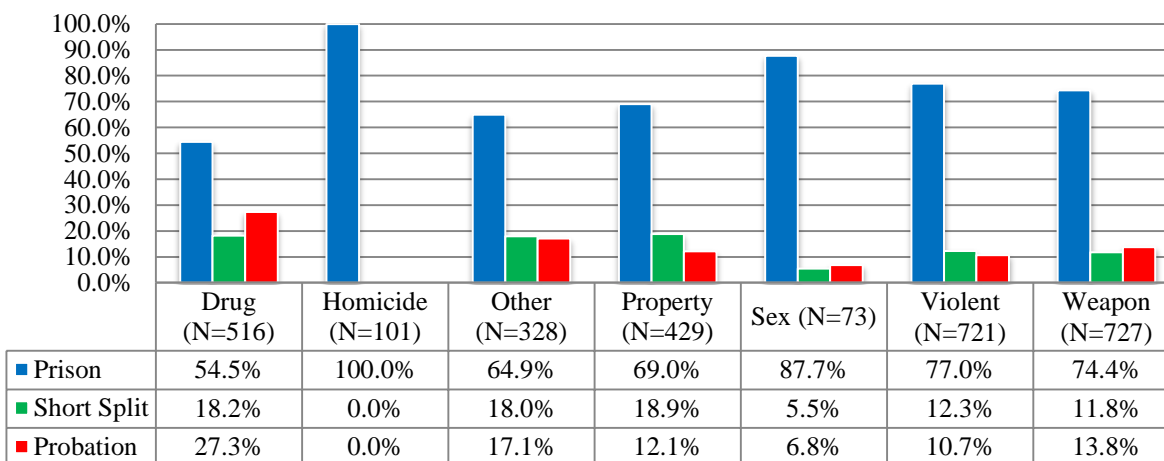


Figure 8b: Sentence Type Imposed on Offense Categories, by Count



Similar to 2011 and 2012, prison was the most common sentence type imposed by case and by count. As indicated earlier, the high rate of prison sentences is partially attributable to the fact

that the Guidelines allow for the imposition of a prison sentence in all grid boxes. Another factor affecting the sentence imposed is the CH Score of offenders. The average CH Score of offenders sentenced to prison (2.1) was much higher than that of offenders sentenced to a term of probation (0.5). However, the data indicate that the overall rate of prison sentences imposed has declined since 2011, by approximately five percentage points by both case and count.

The rate of short split sentences imposed for each offense category ranged from 12% to 18%, suggesting that, when holding criminal history constant, the likelihood of a short split sentence being imposed across offense types did not vary as much as other sentence types. As opposed to prison sentences, short split sentences are becoming more common as they have increased by approximately six percentage points, by both case and count, since 2011.

Analyzing probation sentences, offenders sentenced for violent and sex offenses by case had the lowest probability of receiving a probation sentence and, conversely, the highest probability of receiving a prison sentence. As expected, all sentences for homicide received a period of incarceration; no sentences for homicide resulted in a term of probation. The rate of probation sentences was highest for drug convictions.

The average CH Score for all offenders was 1.6. The average offender CH Score showed little variance across offense categories. The highest average CH Score for an offender in a specific offense category was 2.1 (Property) and the lowest was 1.4 (Weapon). The narrow range of average CH Scores for all offense categories suggests that the variance in types of sentences imposed for different offenses is primarily a function of the offense severity group ranking. Given that violent and sex offenses are generally ranked higher on the Master Grid, these offenses are more likely to receive a prison sentence and the least likely to be sentenced to a term of probation.

A prison sentence was imposed for all 101 homicide counts in 2013. The sentences ranged from 48 months to 630 months. Given that all homicide offenses are ranked between OSG 1 and 5 on the Master Grid, a prison sentence is the only recommended sentencing option under the Guidelines. The average CH Score of offenders sentenced for homicide was slightly lower (1.5) than the overall average CH Score (1.6) of all offenders sentenced in 2013. The average CH Score of offenders sentenced for homicide show a slight decline over past two years, at 2.0 in 2011 and 1.8 in 2012.

F. Type of Sentence Imposed Across Drug Types

Table 1 below shows the distribution of prison, short split, and probation sentences imposed by the various drug types identified.

Table 1: Percentage of Sentence Type Imposed by Drug Type								
Sentence Type	Cocaine		Heroin		PCP²⁸		Other²⁹	
	Case (N=237)	Count (N=277)	Case (N=39)	Count (N=42)	Case (N=74)	Count (N=84)	Case (N=98)	Count (N=111)
Prison	57.8%	60.6%	61.5%	61.9%	49.3%	53.6%	33.7%	36.9%
Short Split	17.7%	17.3%	12.8%	14.3%	21.9%	19.0%	23.5%	21.6%
Probation	24.5%	22.0%	25.6%	23.8%	28.8%	27.4%	42.9%	41.4%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

In 2013, as in 2011 and 2012, drug offenders were sentenced most frequently for cocaine offenses.³⁰ Cocaine was involved in approximately 54% of all drug offenses sentenced by both case and count. The average CH Score for cocaine offenders was consistent with that of the overall drug offender population (1.8), and had an average age of 34 years. Cocaine offenses are ranked higher and treated as a more serious offense under the Guidelines than Schedule III, IV, or V drug offenses, resulting in cocaine offenders being more likely to receive a prison sentence than offenders convicted of drug offenses involving other drugs, such as marijuana.

Among all drug types, heroin offenders represented the highest rate of prison sentences (approximately 62% by both case and count). Similar to cocaine, heroin is classified as a Schedule I narcotic drug. The higher rate of prison sentences is partially a function of the heroin offenders' higher average CH Score (3.0) as compared to the average CH Score for all drug offenders (1.8). Heroin offenders also tend to be older, with an average age of 45 years compared to 34 years for cocaine offenders.

The other drug types evidenced the highest rate of probation.³¹ Unlike cocaine and heroin, these drug types were primarily Schedule III or lower drugs such as marijuana, codeine, and Xanax. More than 40% of all offenders sentenced for cases and counts in the "Other Drug" category

²⁸ PCP stands for phencyclidine. It includes all PCP offenses. Since PWID+Dist PCP and possession of liquid PCP offenses fall in different OSGs, PCP offenses under the Guidelines have a wide range of sentencing options.

²⁹ All other drug types beside Cocaine, Heroin, and PCP.

³⁰ Cocaine offenses also include crack cocaine offenses, which form a significant portion of cocaine offenses reported.

³¹ Other drug types included amphetamine, ecstasy, LSD, methamphetamine, methylone, marijuana, oxycodone, Percocet, psilocybin, and Xanax. These drugs, individually, accounted for less than 1% of all drug sentences, except for marijuana, which accounted for 1.15%.

received a term of probation. A majority (55.1%) of these offenders were sentenced in D3 and 37.8% were sentenced in D4, where seven out of the ten grid boxes are probation eligible. This offender group had an average age of 28 years and an average CH Score of 1.8.

The rate of prison sentences imposed for PCP offenses was relatively low compared to cocaine and heroin, while the rate of probation for PCP (28%) was somewhat higher than that for the other two drug types (between 22% and 25% respectively). Like cocaine and heroin, PCP is a Schedule I/II narcotic/abusive drug,³² and unlawful possession with intent to distribute a controlled substance/distribution of a controlled substance (PWID+Dist) PCP convictions are ranked at the level on the Drug Grid as all other Schedule I or II narcotic drugs. In addition to PWID+Dist PCP convictions and, unlike all other drugs where simple possession of the drug is a misdemeanor, possession of liquid PCP is also felony. However, possession of liquid PCP is treated differently from PWID+Dist. PCP; it is ranked in OSG D3 and attempted possession of liquid PCP is ranked in D4, which probably accounts for the relatively more frequent probation sentences for PCP offenses overall. Of the ten grid boxes available on D3 and D4, seven are probation eligible and two are short split eligible, with only one box reflecting a prison only sentence. Given the structure of the Drug Grid, wherein all attempted possession of liquid PCP convictions are eligible for probation or a short split sentence, they account for a higher percentage of probation sentences when compared to other Schedule I and II drugs.

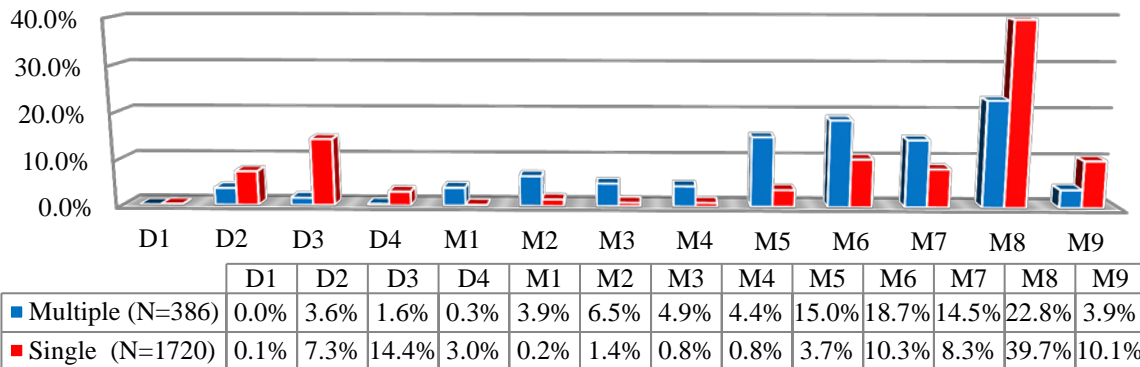
G. Comparison of Single and Multiple Count Cases

Of the 2,106 cases sentenced in 2013, 1,720 were single count cases³³ and 386 were multiple count cases. As shown in Figure 9, offenses from OSGs D3 and M8 (offense severity levels representing less serious offenses) accounted for 54% of all single count cases. The primary offense types sentenced in single count D3 and M8 cases were attempted drug offenses and attempted robbery, respectively. The data suggest that single count cases frequently involve sentences for offenses ranked in lower offense severity groups.

³² Under the Guidelines, convictions for PWID+Dist of a Schedule I or II Abusive/Dangerous Drug are ranked more severely than other unarmed felony drug convictions.

³³ Of the 1,720 single count felony cases, 950 cases included at least one misdemeanor count.

Figure 9: Percentage of Single and Multiple Count Cases by Offense Severity Groups



As the figure above presents, multiple count cases generally involved more serious offenses that were ranked higher on both the Master Grid and the Drug Grid. This may explain the higher rate of prison sentences among multiple count cases (84%) as compared to single count cases (60.8%). Robbery offenses (17.5%) dominated multiple count cases, followed by weapons (16.2%) and then assault (15.1%). However, robbery (20.3%) and weapons (17.6%) were also the most common offenses among single count cases, with attempted drug offenses (13.1%) the third most common. The data indicate that robbery and weapons offenses represent the most common offenses for both single and multiple count felony cases.

Table 2 below shows the overall change in sentencing trend from 2011 to 2013.

Table 2: Distribution of Sentence Types Imposed from 2011 to 2013						
Sentence Type	2011		2012		2013	
	Case (N=2,642)	Count (N=3,689)	Case (N=2,517)	Count (N=3,742)	Case (N=2,106)	Count (N=2,895)
Prison	70.2%	76.6%	68.6%	76.1%	65.1%	70.8%
Short Split	10.4%	8.6%	13.7%	10.7%	16.3%	14.3%
Probation	19.3%	14.8%	17.7%	13.2%	18.6%	14.9%

The data reveal that there has been a very slight shift in the sentencing trends since 2011. The rate of prison sentences imposed has decreased, while the rate of short split sentences has increased. The imposition of probation sentences has remained relatively constant.

III. 2013 Felony Sentencing Demographics: Gender, Race, and Age of Offenders

In 2013, 1,972 offenders were sentenced for 2,106 felony cases within the District. Of that total, 134 offenders were sentenced in more than one felony case during the calendar year.³⁴ The total number of offenders sentenced in 2013 decreased by 384 since 2012 and 332 since 2011.

Listed in Table 3 is a summary of offender demographics by offense categories, which provides an overview of gender, race, and age distributions.

Table 3: Offender Demographics by Offense Categories in 2013

Offense Type	No. of Cases	Gender ³⁵		Race ³⁶			Mean Age
		Female (N=142)	Male (N=1,806)	Black (N=1,738)	White (N=55)	Other (N=17)	
Drug	448	28.2%	20.0%	94.8%	4.5%	0.8%	34.0
Non-Drug	1,658	71.8%	80.0%	5.2%	95.5%	99.2%	28.4
Total	2,106	100.0%	100.0%	100.0%	100%	100%	29.5
Non-Drug Offenses		N = 102	N = 1,444	N = 1,376	N = 38	N = 14	
Homicide	94	7.8%	6.0%	5.7%	5.3%	0.0%	27.0
Other	209	31.4%	9.9%	11.0%	15.8%	0.0%	33.2
Property	287	10.8%	18.1%	17.2%	31.6%	28.6%	29.4
Sex	51	2.0%	3.0%	2.2%	7.9%	21.4%	31.1
Violent	557	23.5%	34.6%	34.5%	28.9%	28.6%	26.3
Weapon	460	24.5%	28.5%	29.4%	10.5%	21.4%	28.3
Total	1,658	100%	100%	100%	100%	100%	28.4
Drug Offenses		N = 29	N = 311	N = 304	N = 16	N = 3	
PWID+Dist	223	37.9%	41.2%	39.5%	66.7%	62.5%	32.5
While Armed	6	0.0%	1.9%	2.0%	0.0%	0.0%	25.7
Attempt	219	62.1%	56.9%	58.0%	33.3%	37.5%	36.1
Total	448	100%	100%	100%	100%	100%	34.4

³⁴ Individual offenders are identified by the Metropolitan Police Department Identification number (PDID) for the purpose of this analysis.

³⁵ There were 24 offenders whose gender information was missing.

³⁶ There were 130 offenders whose race information was missing.

A. Gender and Race of Sentenced Felony Offenders

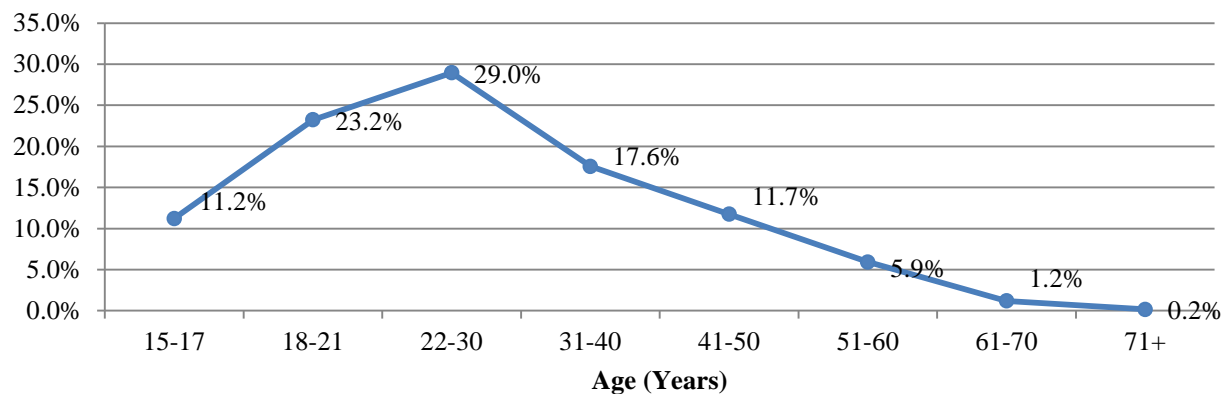
Consistent with previous years' findings, males formed the vast majority of all offenders sentenced for felony offenses in 2013 (92.7%). Approximately 96% of the sentenced felon population were Black, White sentence felons constituted 3.0% of the population while sentenced felons classified as "Other",³⁷ made up 0.9%. Compared to previous years, the percentage of females sentenced decreased by approximately 4 percentage points.

Males were sentenced most often for violent and weapon offenses whereas females were sentenced most frequently sentenced for offenses within the "Other" category.³⁸ Interestingly, females were sentenced for weapon offenses at nearly the same rate as males, at 24.5% and 28.5% respectively.

B. Age of Offenders³⁹

The highest percentage of sentenced felons fell in the 22-30 age group, with only three sentenced offenders older than 71 years of age. There were 216 sentenced offenders (11.2%) who committed criminal acts while they were 16 or 17 years of age who were charged and sentenced as adults.⁴⁰ The average age of all sentenced offenders was 29 years, with a median 25 years, and a mode of 18 years. These findings are consistent with the age distribution reported in 2011 and 2012.

Figure 10: Age Group of Offenders (N=1,924)



³⁷ The "Other" category includes Asians and Hispanics.

³⁸ The top offenses committed by female offenders in the "Other" category were: Second Degree Fraud, Bail Reform Act violations, and Prison Breach.

³⁹ The age of each offender refers to his or her age at the time the offense was committed.

⁴⁰ In the District, a 16 and 17 year old who commits certain enumerated offenses (murder, first degree sexual abuse, burglary in the first degree, armed robbery, or assault with intent to commit any of these offenses) may be prosecuted as an adult in the Superior Court Criminal Division. See D.C. Code § 16-2301(3). Separately, under specific circumstances, a 15 to 17 year old charged with any delinquency offense can be transferred from the Family Court to the Criminal Division upon a motion and hearing, for prosecution as an adult. See D.C. Code § 16-2307.

C. Offender Demographics by Type of Sentence Imposed

1. Gender of Offenders

Males accounted for 95.1% of all offenders who were sentenced to prison and 84.4% of those sentenced to probation. Females accounted for only 5% of all offenders sentenced to prison, but 15.6% of offenders who were sentenced to a term of probation.

Figure 11: Percentage of Males and Females by Sentence Type

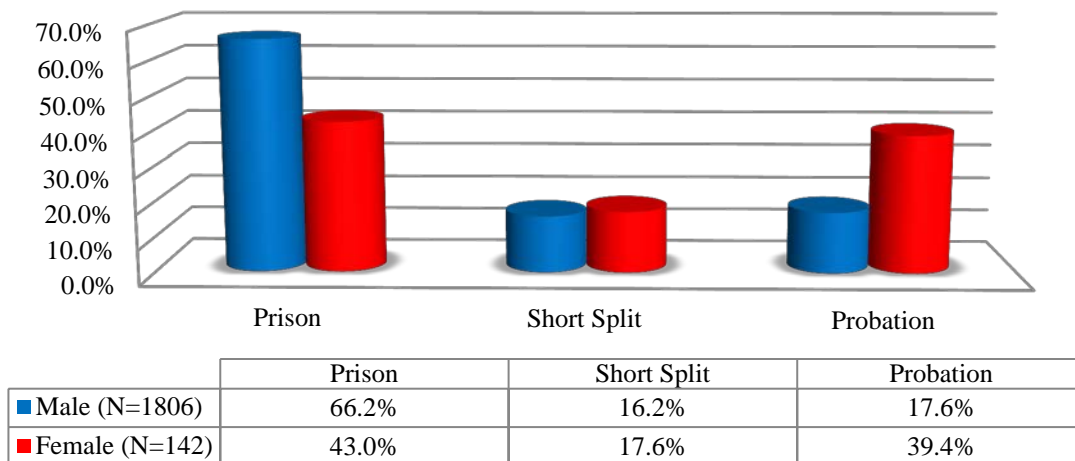


Figure 11 displays the types of sentences imposed by gender. The rate of prison sentences imposed was highest among males (66.2%), while females demonstrated the highest rate of probation at 39.4%. The rate of short split sentences for males and females was nearly identical, 16.2% (for males) and 17.6% (for females). The average CH Score for males (1.8) was higher than that for females (0.9). These findings indicate that, holding offense severity and criminal history constant, males were more likely to receive a prison sentence; females were more likely to receive a term of probation; and both genders were almost equally likely to receive a short split sentence. These trends are in accordance with data from 2011 and 2012.

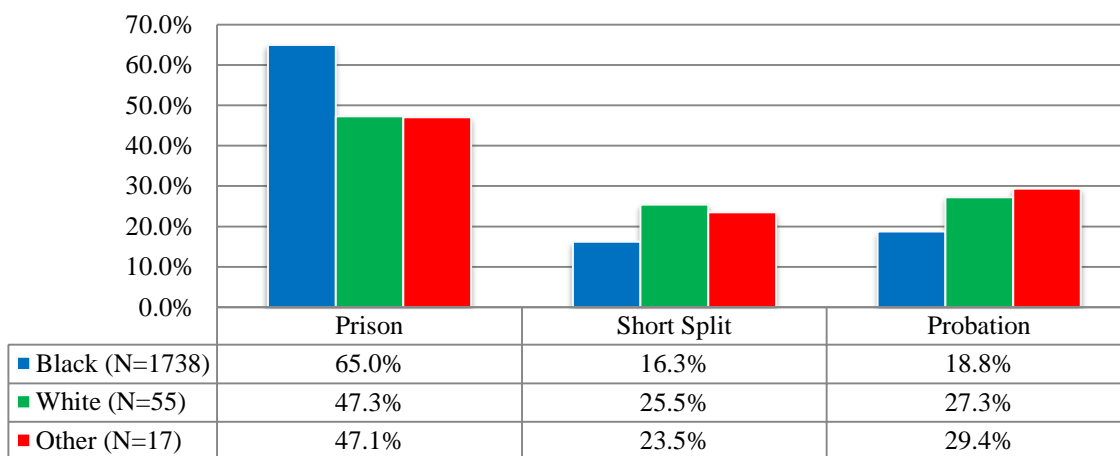
The differing rates of probation and prison among females and males are partially attributable to the nature of offenses for which they were sentenced. Females were more often sentenced for “Other” offenses, which include Second Degree Fraud, Felony BRA violations, Prison Breach, which are ranked in less severe OSG’s on the sentencing grid and probation eligible. However, Males were more often sentenced for weapons and robbery offenses ranked in more severe OSGs on the grid where the recommend guideline sentence is prison. Females also had a low average CH Score (0.9) compared to males (1.8), additionally contributing to the higher probation rate among females.

When comparing sentence trends by gender across 2011, 2012, and 2013, the data indicate an overall decrease in prison sentences by approximately 2 percentage points for males each year, and an approximate 2 percentage points increase for females per year. Probation sentences for females and short split sentences for males have seen a slight increase since 2011. The former shows an increase by approximately 2 percentage points each year, whereas the latter by a total of 3 percentage points.

2. Race of Sentenced Offenders

Consistent with previous years, Black offenders formed the vast majority of the total population sentenced for felony offenses in the District in 2013, accounting for more than 90% of all offenders sentenced.

Figure 12: Percentage of Black, White and Other Offenders by Sentence Type



The data, presented in Figure 12 above, indicate that for all races, prison was the most frequent type of sentence imposed, followed by probation, then by short split sentences. The rate of prison sentences was highest among Black offenders (65%), while the rate of probation was highest among “Other” offenders (29.4%). White and Other offenders were almost equally likely to receive a short split sentence, while Black offenders received a short split sentence slightly less frequently than other races. This trend held in 2011 and 2012 as well, although the rate of prison sentences imposed on White offenders has decreased from 68.5% in 2011 to 56.4% in 2012 to 47.3% in 2013.

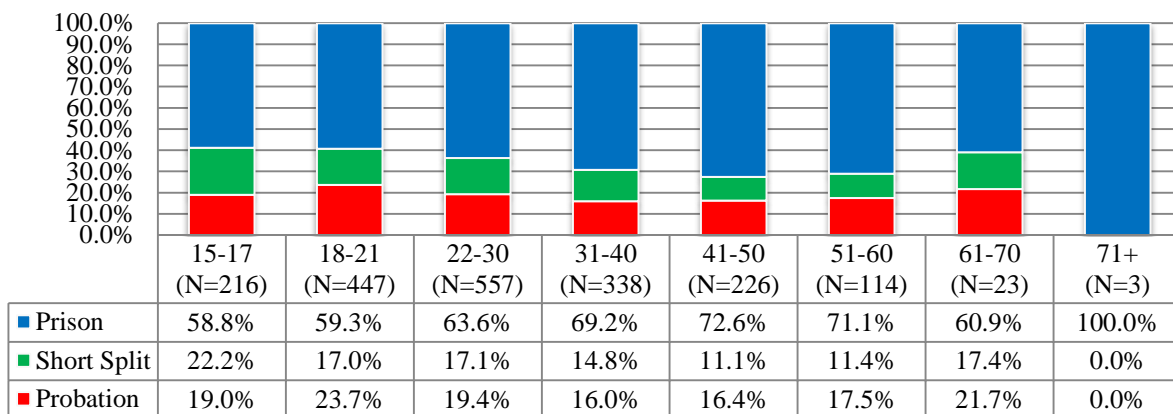
Across both race and gender, in 2013, Black males were most likely (28.1%) to be sentenced for a violent offense whereas White males were most frequently sentenced (28.8%) for drug offenses. Analyzing offense groups within each racial cohort, White males were more likely than Black males to be sentenced for drug and property offenses by approximately 8 percentage points, and sex and “other” offenses by 4 percentage points. Black males were more likely to be

sentenced for violent offenses (9% of all offenses committed by Blacks) and for weapons offenses (16% of all offenses committed by Blacks). The average CH Score of Black males (1.7) and White males (1.4) was comparable. The data indicate that the severity of the offenses for which Black males were sentenced as opposed to White males partially contributes to the higher rate of prison sentences among Black males (66.7%) as compared to White males (48.3%). Given there were only three White female offenders sentenced to prison in 2013, compared to 127 Black female offenders, comparison between White female offenders and Black female offenders is statistically unreliable.

3. Age of Offenders

Figure 13 shows the types of sentences imposed on individual age groups. The highest percentage of offenders fell in the 22-30 year old age group. Prison was the predominant sentence type among offenders of all age groups, followed by probation. For offenders between ages 16 and 17, short split sentences were more common than probation, which would be expected given the serious nature of the offenses which resulted in the offender being charged and sentenced as an adult. Of all adult offenders, the rate of prison sentences was highest among offenders aged 41-50 followed by 51-60, which correlates with the higher CH scores of older offenders. Offenders of ages 19 to 21 years had a higher probability of receiving a probation sentence. This finding was consistent when examining the types of sentences imposed by drug and non-drug offenders as well. However, the probation rate for drug offenders remained virtually constant for all age groups, ranging between 29% and 39%. This finding suggests that all drug offenders were almost equally likely to receive a probation sentence regardless of their age and the structure of the Drug Grid.

Figure 13: Percentage of Sentence Imposed by Age Group



Offenders younger than 18 represent youth who were charged and sentenced as adults. In 2013, there were 49 offenders in this age group, accounting for 53 cases and 91 counts.⁴¹ This age group was primarily sentenced for violent offenses (49.5%), followed by homicide (15.4%), with no offenders in this age group sentenced for a sex offense and only one offender sentenced for a drug offense. Given the serious and violent nature of offenses committed by the 16 to 17 age group, the rate of prison sentences for this age group was 70.3%.

Table 4 below shows the average ages by offense categories of the three sentence types imposed:

Table 4: Average Age of Offenders by Sentence Type and Offense Categories (Years)							
	Drug	Homicide	Other	Property	Sex	Violent	Weapon
Prison (N=1,242)	35	27	33	32	30	27	30
Short Split (N = 311)	32	0	31	25	46	23	26
Probation (N= 371)	33	0	36	24	28	23	25

According to the data presented in Table 4, offenders sentenced for violent offenses tend to be younger than offenders in any other offense category. This finding was true for all sentence types imposed. Conversely, Drug and “Other” offenders had the highest average age. Sex offenses show the widest age range; but given the limited number of sex offenses, it is difficult to draw any valid conclusions from the data.

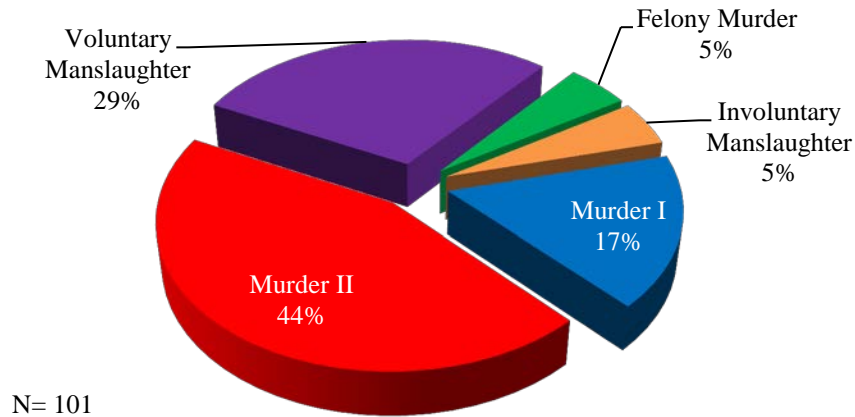
IV. Homicide

In 2013, the Commission decided to analyze homicide offenses separately from other violent offenses.⁴² Homicide offenses result in the loss of a human life, whether intentionally or unintentionally. The seriousness of this offense sets it apart from other violent offenses and warrants close analysis of sentencing trends, patterns, and demographics. In addition, the sentences imposed for homicide are typically quite lengthy and can skew analyses of sentences for violent offenses if they are included in the analysis.

⁴¹ This cohort consisted of 48 male offenders and one female offender.

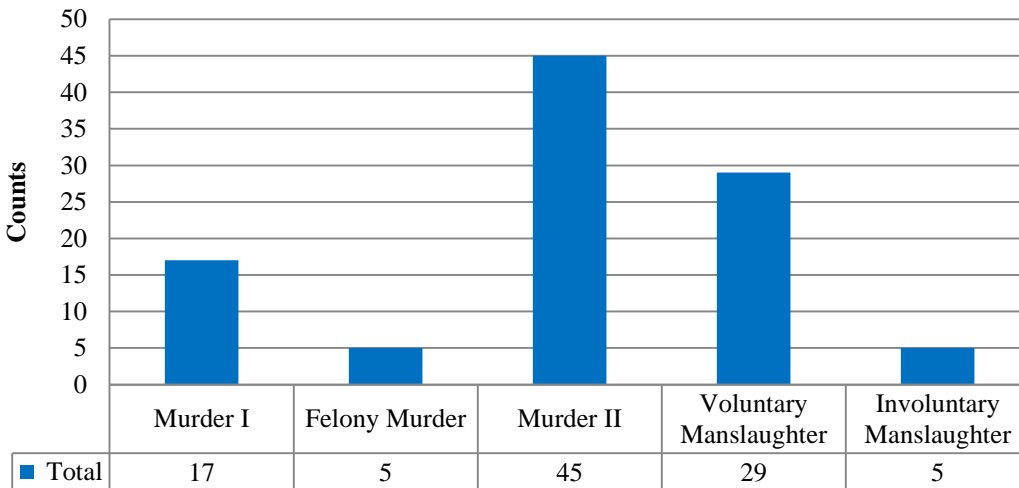
⁴² For analysis purposes, Homicide includes Felony Murder, Murder I, Murder II, Voluntary Manslaughter, and Involuntary Manslaughter.

Figure 14: 2013 Homicide Counts



There were 94 cases containing 101 counts sentenced for homicide in 2013. Of the 94 homicide cases sentenced, 49 were multiple count cases and 45 represented single count cases. The distribution of homicide sentences imposed is presented in Figure 15 below.

Figure 15: Homicide Offenses by Counts



Involuntary manslaughter and felony murder were the least common homicide offenses by both cases and counts sentenced. By contrast, Murder II accounted for the highest number of homicide sentences imposed, accounting for 44 cases and 45 counts, followed by voluntary manslaughter at 27 cases and 29 counts. Sentences for homicide offenses ranged from 48 months to 630 months. The overall average sentence imposed for homicide offenses was 251 months but varied according to the specific homicide offenses. The average CH Score of

offenders sentenced for homicide was slightly lower (1.43) than the overall average CH Score (1.7) of all offenders sentenced in 2013.

Table 5 below displays the minimum, maximum, and average sentence imposed by type of homicide.

Table 5: Homicide Type by Sentence Length				
Type	# Counts	Average Sentence (months)	Minimum Sentence	Maximum Sentence
Murder I	17	465.9	360	600
Felony Murder	5	496.8	360	630
Murder II	45	246.1	96	630
Voluntary Manslaughter	29	122.4	48	204
Involuntary Manslaughter	5	65.2	48	90

Ninety-four offenders were sentenced for homicide offenses in 2013, with six offenders sentenced for more than one count. Males accounted for 93 homicide counts sentenced while females accounted for eight homicide counts sentenced. The average age of offenders sentenced for homicide was 27 years, with a modal age of 17. Eighty-three percent of offenders sentenced for homicide were Black, two percent White and 15 percent Other. Overall, offenders sentenced for homicide were younger than average age of offenders sentenced and had a lower than average CH Score of 1.4

V. Top Five Grouped Offenses⁴³

The top five grouped offenses sentenced during 2013 accounted for more than 70% of all felony sentences imposed. They include:

- Robbery offenses
- Weapon offenses
- Assault offenses
- Possession with Intent to Distribute a Controlled Substance or Distribution of a Controlled Substance (PWID+Dist)
- Attempted Drug Offenses

⁴³ See Appendix C for a list of all grouped offenses.

Provided below is a summary of offense and offender-related information for each specific grouped offense in order of their frequency by case.

A. Robbery Offenses

Robbery was the most common grouped offense for which a sentence was imposed in 2013. This specific offense constituted approximately 19% of all felony cases sentenced in 2013, as opposed to only 16.8% in 2012, and 10.3% in 2011, an increase of nine percentage points over the past two years. Robbery offenses are ranked in M5 (armed robbery), M6 (unarmed robbery and attempted armed robbery), and M8 (attempted unarmed robbery). Attempted unarmed robbery, commonly referred to as cell phone “snatch and grabs” accounted for 47.8% of all robbery convictions sentenced in 2013. The data indicate that although there was an increase in the percentage of robbery offenses over the past year, the majority of the increase is attributed to sentences for attempted unarmed robbery, a lower offense severity group compared to unarmed robbery offenses sentenced in previous years.

In 2013, offenders were sentenced to prison in more than 70% of all robbery convictions by both cases and counts. Judges imposed short split or probation sentences in approximately 28% of robbery cases. The majority (52.5%) of robbery offenders fell in OSGs M5 or M6, and the average CH Score of offenders sentenced for robbery offenses was 1.4. Under the Guidelines, prison is the only sentencing option for offenders with a CH Score of 1.4 in OSGs M5 or M6. The average CH Score of offenders convicted of robbery partially explains the high rate of prison sentences.

Most (83%) robbery cases were single count cases, and 58.2% of these single count cases were attempted robbery cases. The demographics of this population were consistent with the overall offender population of the District in 2013. The highest number of the 381 offenders convicted for robbery were Black (91.6%) males (95%) from the age group 19-21 years old (33.8%) with an average age of 24 years and a median age of 25 years.

B. Weapon Offenses

In 2013, offenders were sentenced for 347 cases and 563 counts of weapon offenses. Carrying a Pistol (CP, formerly Carrying a Pistol Without a License), Unlawful Possession of a Firearm, Felon in Possession of a Firearm (UPF), and Possession of a Firearm during a Crime of Violence or Dangerous Crime (PFDCV) constituted approximately 98.5% of felony weapons cases and 95% of felony weapon counts.

The Commission ranked Weapon offenses in five different OSGs, M5 to M9, with the highest percentage falling in OSG M8 by case (56.2%) and count (50.3%). CP accounted for more than 94% of all M8 weapons offenses. Given the varying range of OSGs in which weapons offenses

are ranked, recommended sentencing options for weapons offenses under the Guidelines include all three sentence types - prison, short split, and probation. However, prison was the most frequent type of sentence imposed. Although the mean CH Score for weapon offenders was relatively low (1.4), the mandatory minimum sentencing provisions for PFDCV and repeat weapon offenders result in the imposition of prison sentences more frequently for weapon offenses than for robberies or PWID+Dist. Weapon offenses also formed a significant proportion of multiple count cases. Of the 386 multiple count cases, 15.8% represented cases in which a weapon offense was the most severe count. Typically a weapon offense would not be ranked the most severe offense except where the other offenses are misdemeanors or where PFDCV received a higher sentence (mandatory 60 months) than the underlying crime of violence. PFDCV accounted for approximately 30% of all weapon offenses.

There were a total of 315 offenders sentenced for weapon offenses. Of this total, 93.2% were Black, 97.3% were males, and 91.1% were Black males. Similar to 2012 and 2011, females were least likely to be sentenced for a weapon offense, with only seven females sentenced for this offense in the current year. Offenders aged 22 to 30 were sentenced most frequently for this offense, while the mean age was 26 years, the median was 25 years and the mode was 21 years.

C. Assault Offenses

The percentage of assault offenses in 2013 remained virtually the same as that in 2011 and 2012. Assault, as a grouped offense, accounted for 12% (253) of all felony cases and 13.5% (392) of all counts sentenced in 2013. Since felony assault cases can involve a wide range of criminal behavior, assault offenses are ranked between OSGs M3 and M8 on the Master Grid. Two assault offenses, assault with a dangerous weapon (ADW), a M6 offense, and assault with significant injury, an M8 offense, accounted for 74.7% of all sentences imposed for an assault offense.

Of the six OSGs in which this offense group is ranked, 24 of the 30 boxes in the six OSGs are prison only boxes. Consequently, the rate of prison sentences imposed for this offense was higher than other top five grouped offenses. The rate of prison sentences imposed for assault was approximately 69.2% by case and 80% by count whereas that for all other top five grouped offenses ranged between 54% and 74% by both case and count. Corresponding to the Guidelines, probation was imposed only in 13.1% of all assault cases and 8.2% of all assault counts.

There were 244 offenders sentenced for this grouped offense. Similar to previous years, as well as the overall offender demographics, only a minor percentage of those sentenced for Assault were females (11.5%) or White (2.3%) offenders. When examining the age group of offenders sentenced for assault, the most common age group was 22 to 30, while the average age was 32 years; the median age was 28 years; and the mode was 20 years. The young age of offenders in

this group, paired with their low CH Scores (mean of 1.5, a median of 1, and a mode of 0) highlights the challenges the criminal justice system faces in addressing youth violence.

D. Possession with Intent to Distribute a Controlled Substance or Distribution of a Controlled Substance (PWID+Dist)

In 2013, PWID+Dist accounted for 223 cases (10.6% of all felony cases) and 275 counts (9.5% of all felony counts). In approximately 69% of these sentences, cocaine was the primary drug involved in the offense. All PWID+Dist felonies are ranked in D2 (Schedule I or II narcotic/abusive drug) or D3 (all other types of drugs). PWID+Dist while armed offenses (D1) are excluded from this group. These specific severity levels allow for the imposition of all three sentence types - prison, short split or probation - depending on the offender's CH Score.

Following the trend for all grouped offenses, a large proportion of PWID+Dist offenders were sentenced to prison (53.8% by case and 53.5% by count) for an average sentence length of 21.5 months. Probation or short split sentences were almost equally likely to be imposed for PWID+Dist offenses. The rate for both sentence types ranged between 20% to 26% by both case and count. The average CH Score of PWID+Dist offenders sentenced to prison (2.4) was substantially higher than those sentenced to a term of probation (0.7). Short splits were the least common sentence type for this grouped offense, with only 22.2% of felony sentences for PWID+Dist resulting in a short split sentence.

Drug sentences as a percentage of all felony sentences imposed have demonstrated a significant decrease since 2011. Sentences for drug offenses accounted for 40.5% of all sentences imposed in 2011. In 2012 that percentage decreased to 25.2% and by 2013 drug sentences only represented for 17.8% of a sentences imposed.

There were 138 offenders sentenced for this offense group. Similar to the overall offender population in 2013, 85% of the offenders were Black, and 90.8% were males and 77.3% were Black males. Offenders aged 22 to 30 years accounted for 33.3% of all offenders sentenced for PWID+Dist. The average age of PWID+Dist offenders was 32 years, while the median was 30 years and the mode was 20 years. These demographics remained virtually unchanged from the previous two years.

E. Attempted Drug Offenses

Attempted drug offenses accounted for 219 cases and 231 counts in 2013. As with PWID+Dist, cocaine was the primary drug type, constituting 59.7% of all counts and cases of this offense. Cocaine has continued to remain the most common drug type since 2011, however the percentage of cocaine-related attempted drug offenses has been decreasing. In 2011, the rate of

cocaine-related convictions amongst attempted drug offenses was 74.5%, in 2012 it fell to 69.7%, and 59.7% in 2013.

This grouped offense category falls within OSG D3 or D4, for which all drug grid boxes, except one box (D3 with a CH Score 6 and higher), are designated as probation or short split eligible. The structure of the drug grid also explains the highest rate of probation (approximately 30% by both case and count) for attempted drug offenses in comparison to all other grouped offenses. The limited CH Score of offenders convicted for this offense is another factor contributing to the higher rate of probation for this group. The mean CH Score was 1.9 with a median of 2 and a mode of 0. Since there are numerous probation eligible grid boxes for this offense, the rate of prison sentences was approximately 54%, which is 12 percentage points lower than the rate of prison sentences for non-drug offenses (66.4%). Short split sentences were imposed in 15% of cases and counts involving an attempted drug offense. The distribution of sentence types imposed for this offense remained consistent with the distribution of sentence types imposed in 2012 and 2011.

Overall, there were 196 offenders sentenced for attempted drug offenses. Similar to demographics found in other grouped offenses, Black (89.9%) male (89.4%) offenders again formed the majority (81.8%). Offenders from age group 22-30 were most likely (28.3%) to be sentenced for this offense; the mean age was 36 years. The discrepancy between the mean and the most frequent age group is due to seven offenders over the age of 61 being included in this offense group, which affected the mean age.

F. The Distribution of the Top Five Grouped Offenses

Figure 16a: Top Five Grouped Offenses from 2011 to 2013, by Case

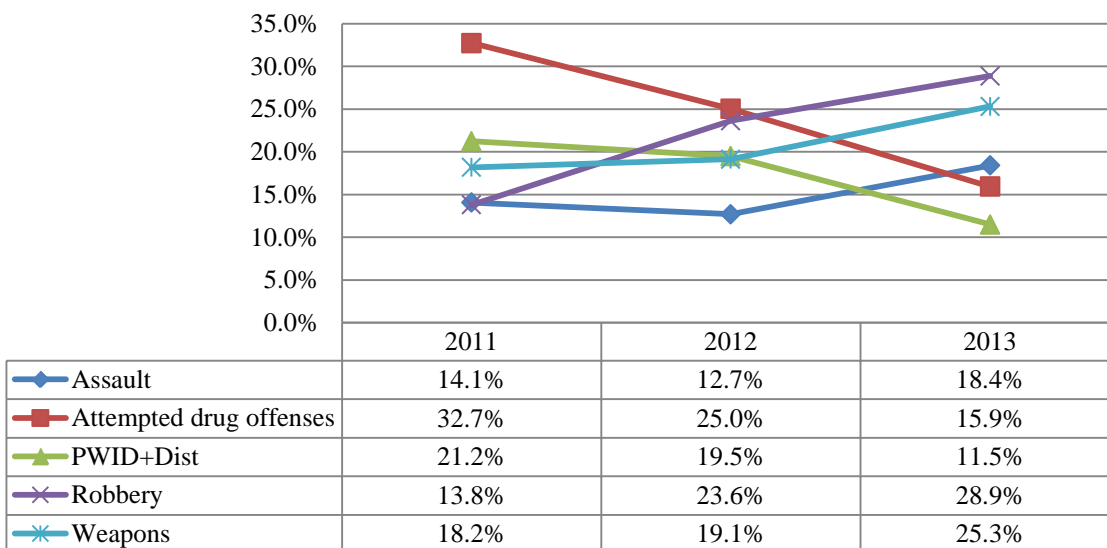
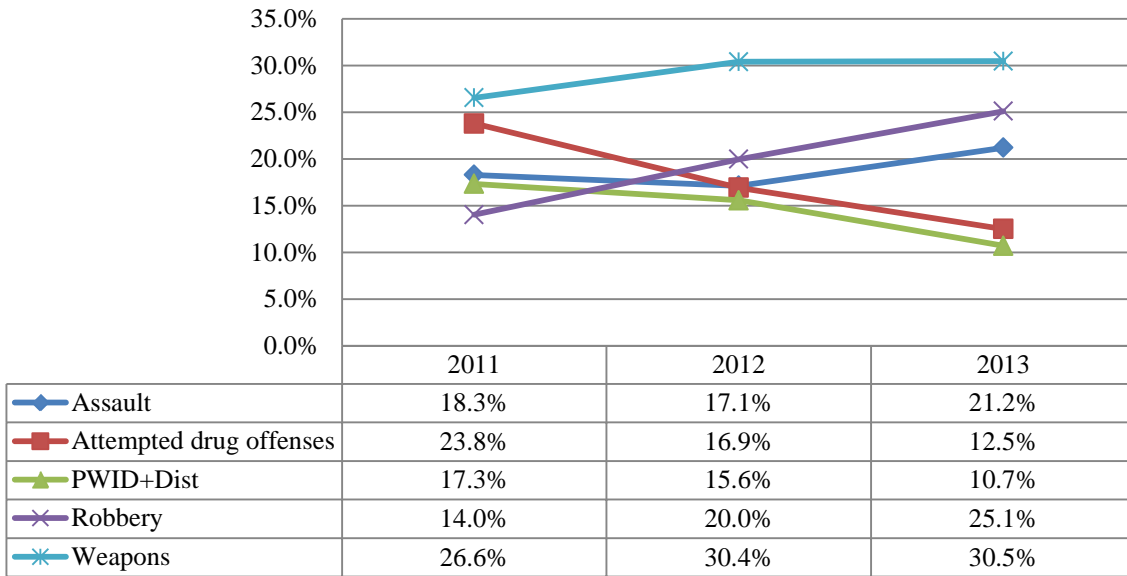


Figure 16b: Top Five Grouped Offenses from 2011 to 2013, by Count



VI. Conclusion

During 2013, the Superior Court imposed sentences for 2,106 felony cases, which included 2,895 felony counts. The total number of cases and counts sentenced in 2013 decreased by 413 cases and 849 counts from 2012, and 536 cases and 794 counts from 2011. The data indicate a decline in the number of felony cases and counts sentenced over the past three years and follows the same declining trend found in the number of felony cases filed in Superior Court for the same time period.

Similar to previous years, more than 90.3% of all cases were disposed of through guilty pleas, while jury and bench trials accounted for approximately slightly less than 10% of all convictions. When examining individual offense categories (drug, homicide, violent, sex, property, weapon, and other), violent and weapon offenses were the two most frequent offense types sentenced by both case and count. Prison remained the dominant sentence type, with the rate of prison sentences imposed for non-drug offenses higher than the rate of prison sentences imposed for drug offenses. Conversely, the rate of probation was highest among drug offenses and lowest for violent and sex offenses. The majority of probation sentences imposed involved single count cases, which generally involved lower OSG offenses compared to multiple count cases.

While overall sentencing patterns in the District in 2013 were similar to 2011 and 2012, the rate of prison sentences imposed has shown a slight decline of approximately five percentage points

since 2011. Short split sentences, although the least common sentence type imposed, have increased by approximately 6 percentage points over the same time period.

The offender demographics in 2013 show minimal difference compared to prior years. Of a total of 1,972 offenders sentenced, 96.2% were Black, 92.7% were males, and 81.3% were Black males. Offenders aged 22 to 30 years formed the largest percentage of all offenders sentenced. Prison sentences accounted for the majority of sentences imposed among males, whereas probation was more common among females. However, since 2011, probation sentences for females and short split sentences for males have been increasing, while prison sentences have been declining overall. This trend is partly a function of the difference in the types of offenses for which males and females are sentenced. The data shows that females were sentenced more often for drug offenses, whereas males were sentenced more often for violent offenses. Offenders were more likely to be sentenced to prison than any of the other sentencing options when CH Scores are held constant.

The top five grouped offenses, which account for over 70% of all felony sentences imposed, have remained constant over the past three years; however, the ranking of the grouped offenses has changed slightly. In 2013, robbery has shown the largest increase followed by weapons and assault. There has been a notable decrease in drug and attempted drug offenses by both case and count. This finding indicates a shift in the types of offenses most frequently sentenced in the District, and reflects the shift in arrest patterns as well.

The sentences imposed closely follow the structure set forth in the Sentencing Guidelines, which promote consistency and fairness in sentencing. Prison sentences are imposed for violent and serious criminal behavior and chronic offenders, whereas less serious criminal behavior and offenders with minimal prior criminal history more often receive probation or short split sentences. Prison sentences protect public safety and incapacitate chronic offenders, whereas a term of probation aims at rehabilitating the offender to reduce future offenses, while still holding the offender accountable for his or her wrongdoing.

CHAPTER FIVE

COMPLIANCE WITH THE DISTRICT OF COLUMBIA VOLUNTARY SENTENCING GUIDELINES

As part of its statutory mandate, the Commission continually monitors and analyzes judicial compliance with the Guidelines. Monitoring judicial compliance serves as a measure to review sentencing practices in the District, and enables the Commission to study whether the Guidelines are effective in promoting fair and consistent sentencing. Monitoring compliance can also reveal sentencing patterns that may suggest the need to revise or modify specific areas of the Guidelines.

In general, compliance with the Voluntary Sentencing Guidelines in the District of Columbia remains very high, consistently near or above 90%.⁴⁴ In 2013, more than 96% of all felony counts sentenced were compliant with the Guidelines.

I. How the Commission Defines Compliance with the Sentencing Guidelines

The Commission evaluates compliance with the Sentencing Guidelines by determining if the actual sentence imposed by the court falls within the sentencing options and sentencing range recommended by the Guidelines. Two primary factors determine the Guidelines compliant sentencing options and range for each count sentenced: the offense severity group (OSG) and the defendant's prior criminal history (CH) score.

The Guidelines place every non-drug felony offense into one of nine OSGs (M1 to M9) based on its predetermined severity level (the more serious an offense, the lower the severity group number). Similarly, the Guidelines place every felony drug offense into one of four OSGs (D1 to D4), from the most serious to the least serious.

Prior to sentencing, CSOSA calculates a defendant's CH Score by researching each defendant's complete criminal history.⁴⁵ CSOSA then calculates a numerical CH Score for each defendant

⁴⁴As discussed in Chapter Three, the Commission has recently implemented the GRID system that, amongst other capabilities, automatically calculates and tracks compliance based upon the offense of conviction, the defendant's criminal history score, and other variables. As a result of the change to the new GRID system, the Commission is able to collect and analyze sentencing data that was not previously available. It is difficult to compare general 2013 compliance data from the GRID system with data from previous annual reports due to the increased data sources and the amount of sentencing data available in the GRID system. However, it is worth noting that based upon analysis by both the Commission's legacy data system and the new GRID system, since 2010, Guidelines compliance has been consistently over 90%.

⁴⁵ On rare occasions, such as when the court sentences the defendant immediately after a plea or verdict, CSOSA does not have the opportunity to produce a complete criminal history for a defendant.

by applying a series of Guidelines rules. The CH Score primarily accounts for the type, number, and severity of the defendant's prior convictions, as well as the length of time between the expiration of the offender's prior sentences and the commission of the instant offense. Once the CH Score is calculated, the Guidelines place the score into one of five categories, A through E, with A representing the lowest criminal score category and E representing the highest.

The intersection of a defendant's OSG and CH Score category on either the Master Grid or the Drug Grid identifies the grid box containing the defendant's Guidelines compliant sentence type and range (See Appendix A and B for copies of the Master Grid and Drug Grid). There are three types of sentences under the Guidelines: prison, short split, and probation.

Of the 45 total boxes on the Master Grid, 35 are white/unshaded, "prison only" boxes,⁴⁶ four are dark shaded (or green), short split permissible boxes,⁴⁷ and six are light shaded (or yellow), probation eligible boxes.⁴⁸ On the Drug Grid, six of the 20 boxes are white/unshaded, prison only boxes, four are dark shaded, short split permissible boxes, and ten are light shaded, probation eligible boxes. Additionally, the ranges designated within each box can be expanded by certain statutory sentencing enhancements. These enhancement provisions are based on such factors as the victim's status (e.g. senior citizen, bias-related), where the crime occurred (e.g. a drug-free zone), whether or not the defendant is a repeat offender, or other aggravating factors.⁴⁹

II. Departures from the Guidelines

The Guidelines were designed to promote consistency in sentencing among similar offenders convicted of similar crimes. However, there will always be unusual or exceptional cases that cannot be accounted for by a broad set of sentencing principles such as the District's Guidelines. In order to address atypical cases or defendants, the Guidelines allow judges to depart from the recommended sentencing options. Departures are classified as either aggravating or mitigating departures depending on whether they allow for an increase or decrease to the Guideline range. There are 11 aggravating departure principles that may be used when the sentence imposed by

⁴⁶ To impose a compliant prison only sentence, the court must impose a prison sentence that falls within the applicable Guidelines range. The court may suspend part of the defendant's sentence, however, the actual amount of time to be served in prison must still fall within the appropriate Guidelines range.

⁴⁷ To impose a compliant short split sentence, the court must impose a prison sentence that falls within the applicable Guidelines range and suspend execution of all but six months or less - but not all - of that sentence, and impose a term of probation to follow the relatively brief term of incarceration.

⁴⁸ To impose a compliant probation sentence, the court must impose a prison sentence that falls within the applicable Guidelines range, suspend execution of the entire prison sentence, and impose a term of probation to follow the relatively brief term of incarceration.

⁴⁹ Statutory minimum and mandatory minimum sentencing provisions do not change a defendant's applicable sentencing range under the Guidelines. However, they may limit the court's discretion to impose a Guidelines compliant sentence within a particular box. The court may not impose a sentence lower than the mandatory minimum, even if lower sentences are otherwise available in the appropriate box.

the judge is more severe than the sentence recommended by the Guidelines, and ten mitigating departure principles that may be applied when the sentence imposed by the judge is less severe than the Guideline recommended sentence. When one of the 21 departure principles is cited by a judge as a reason for imposing the departure, the sentence is considered a “compliant departure.”⁵⁰ The Guidelines are voluntary. Therefore a judge can impose any legal sentence, whether or not it is compliant with the Guidelines, and choose not to cite a mitigating or aggravating factor. The Commission characterizes these as “non-compliant departure” sentences.

The Commission assigns all sentences imposed to one of the following five categories:

- **In-the-Box Sentences**—sentences that fall within the appropriate sentence type (prison only, short split, or probation) and sentence range based on the defendant’s offense of conviction and CH Score.
- **Compliant Outside-the-Box Sentences**—sentences that fall either above or below the original Guidelines range/sentencing options for that defendant, but are compliant with the Guidelines due to other factors. Examples include: sentences that run concurrently with a compliant greater or equal sentence and sentences based upon a sentencing enhancement.⁵¹
- **Rule 11(e)(1)(C) Sentences**—sentences that are based upon a Rule 11(e)(1)(C) guilty plea, wherein the parties, with the court’s approval, agree upon a sentence at the time the plea is entered.⁵²
- **Compliant Departures**—sentences that do not fall within the appropriate sentence type or Guidelines range given a defendant’s offense of conviction and CH Score; however, the judge cited an applicable aggravating or mitigating departure principle.
- **Non-Compliant Departures**—sentences that do not fall within the appropriate sentence type or sentence range given a defendant’s offense of conviction and CH Score, and the judge does not cite a valid aggravating or mitigating departure principle.

⁵⁰ See Appendix D for a full list of departure principles under the Guidelines.

⁵¹ Technically, sentences based upon statutory enhancements are not outside the box. Under Chapter Four of the Guidelines, a statutory enhancement raises the maximum sentence in the Guidelines range for the applicable box in direct proportion to the effect of the enhancement on the statutory maximum sentence.

⁵² Under Criminal Rule 11(e)(1)(C) the parties can agree on a guilty plea with a specific sentence or sentence range or cap. If the judge accepts the plea, the judge is also bound by the parties’ agreement. All counts sentenced as a result of a Rule 11(e)(1)(C) plea are classified as compliant Rule 11(e)(1)(C) sentences regardless of whether the sentence imposed would have otherwise been compliant with the applicable Guidelines range and/or sentencing options.

The classification of compliance into five distinct categories enables the Commission to examine instances when a judge's sentence falls within the recommended range, expands the range, follows a departure principle, or when the judge chooses to sentence outside the Guidelines.

III. Data Reporting

As discussed earlier, measuring judicial compliance with the Guidelines begins by identifying the appropriate sentencing range and options for every felony conviction in a case and comparing that to the actual sentence imposed. CSOSA and the Superior Court provide the data used by the Commission in analyzing compliance.

The Commission continually strives to refine its data collection processes and to improve the quality and completeness of compliance data reported. As described in Chapter Three, 2013 data was provided through the Commission's new GRID system, resulting in significantly more comprehensive and reliable data. Use of the GRID system improved the quality of the data used in the compliance analysis, and ensures that the data received and reported by the Commission matches data provided by the Superior Court, CSOSA, and other criminal justice partners.

Historically, the Commission validated sentencing data by mailing departure letters to judges for every sentence that appeared non-compliant. These letters provided the sentencing judge the opportunity to identify inaccuracies in the data, such as an incorrectly recorded sentence, a modified CH Score, or an unreported compliant departure. While the Commission continues to utilize departure letters, the number of letters sent based upon inaccuracies in sentencing data has been reduced through the use of the GRID system and automated data verification processes; most departure letters are now the result of non-compliant sentences or cases where the defendant's CH Score was modified on the day of sentencing, but the change was not reported to CSOSA.

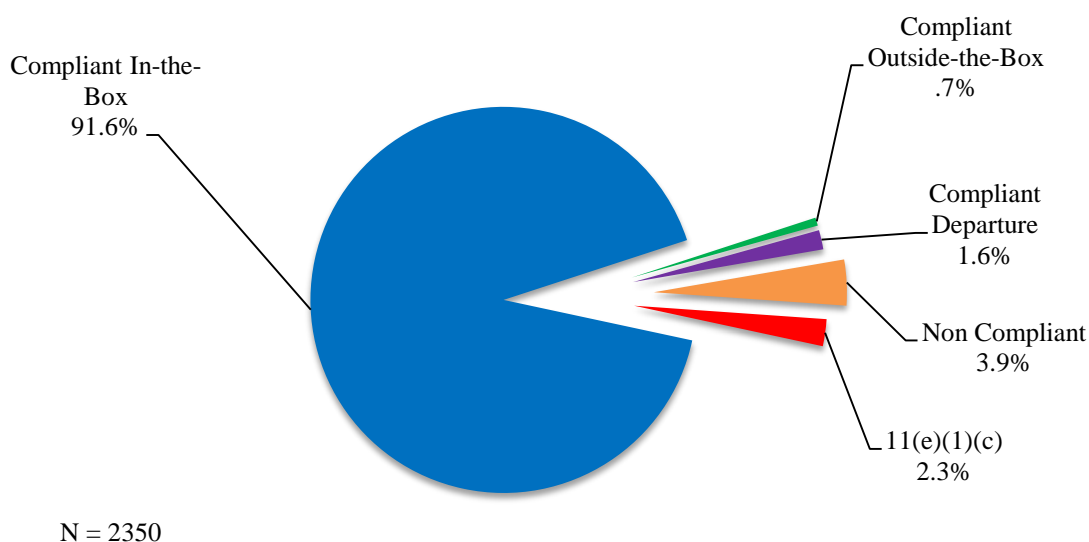
In 2013, the Commission received complete sentencing data (consisting of a CH Score, a conviction charge, and a sentence) in all cases in which a Superior Court judge request a CH Score. A CH Score was requested in 99.24% of all felony counts sentenced in 2013. The Commission received complete sentencing data in all cases for which CSOSA calculated the defendant's CH Score. The less than one percent of counts without complete sentencing data were the result of cases where the court did not request CSOSA to calculate the defendant's criminal history score and sentenced the defendant without ordering a new presentence report.

IV. Compliance Analysis

This section examines the sentences imposed in 2013 based on the five compliance categories: compliant in-the-box sentences, compliant outside-the-box sentences, compliant departures, Rule

11(e)(1)(C) sentences, and non-compliant departures. The overall compliance rate for all felony sentences imposed in 2013 was 96.1%. In 2013, compliant outside-the-box sentences represented 0.7% of all felony counts sentenced, 1.6% were compliant departures, 2.3% were Rule 11(e)(1)(C) pleas, and 3.9% were non-compliant departures. Figure 17 below provides a picture of the various types of compliant and non-compliant sentences under the Guidelines.⁵³

Figure 17: Judicial Compliance Rate



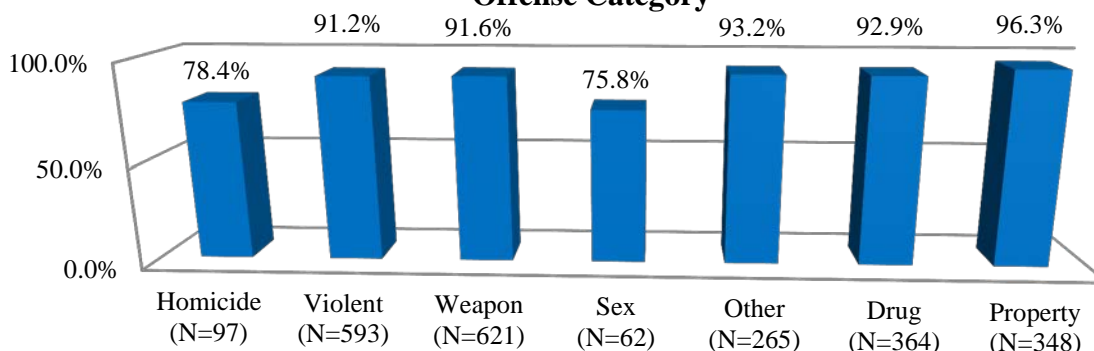
A. Compliant In-the-Box Sentences

In 2013, 91.6% of all counts sentenced resulted in a compliant in-the-box sentence, meaning that the sentence was within the recommended range and sentence type. The data presented in Figure 18 below show that more than 90% of all sentences imposed for each offense category - drug, violent, property, weapon, and other - were compliant in-the-box, with the exception of homicide and sex offenses. Property offenses showed the highest rate of compliant in-the-box sentences. For homicide and sex offenses, the in-the-box compliance rates were 78.4% and 75.8%, respectively. The Commission expected this finding, given the intricacy of these types of cases and the variety of facts in each offense. Sex offenses cover a wide range of criminal behavior and the homicide category includes both voluntary and involuntary manslaughter, which often preset the sentencing judge with unusual and difficult fact patterns. In addition, there are often specific victim impact issues present in homicide and sex offense cases that can directly impact

⁵³ For the purposes of analyzing the annual compliance rate, the Commission does not consider counts sentenced following probation revocation, remand from the Court of Appeals, sentences for which the Guidelines did not apply, and sentences for which the Commission did not receive a CH Score. Further, all compliance data was subject to additional validation and verified through an in-depth review of the Superior Court docket.

the sentencing process. Finally, homicide and sex offenses are the least common case types (76 compliant in-the-box homicide counts and 47 compliant in-the-box sex counts sentenced in 2013); therefore, a limited number of non-compliant sentences can have a significant impact on the overall rate of compliance in those offense categories.

Figure 18: Percentage of Compliant In-The-Box Sentences within Each Offense Category



B. Compliant Outside-The-Box Sentences

There were 16 compliant outside-the-box sentences in 2013, which constituted 0.7% of all sentenced counts for which compliance was calculated. These sentences were either the result of an enhancement increasing the sentencing range or cases where the Guidelines rules permitted a concurrent sentence and the sentence imposed was not compliant by itself but was to be served concurrently with a greater or equal compliant sentence.⁵⁴

C. Compliant Departures

Compliant departures accounted for 1.6% of all sentences imposed, consisting of 38 counts, 13 of which were upward departures and 25 of which were downward departures.⁵⁵ Although these departures constituted a small percentage of all sentences, they offer insight into the reasons judges choose to impose a sentence outside of the Guidelines.

Judges cited the following departure reasons in 2013:

- A1 - There was deliberate cruelty to a victim;

⁵⁴ Under the Guidelines, a judge may impose a sentence to be served concurrently with another sentence in the same case except for multiple crimes of violence committed against multiple victims, multiple crimes of violence against one victim in multiple separate events, or the statute required a consecutive sentence.

⁵⁵ Compliant departures include both durational and dispositional departures. A durational departure is one where the court imposed a sentencing above or below the in-the-box sentencing range. A dispositional departure is one where the court imposed a sentence within the in-the-box sentencing range, but the Guidelines did not permit the type of sentence imposed in the applicable box (such as a probation sentence in a prison only box).

- A10 - The consecutive/concurrent sentencing policy results in a Guidelines sentence so lenient in relation to the seriousness of the offense and the history of the defendant that imposition of the Guidelines sentence would result in manifest injustice;
- A11 - Any other substantial and compelling basis, similar to those articulated in the Guidelines, to depart upward;
- M6 - The defendant could not appreciate the wrongfulness of his or her conduct;
- M7 - The defendant has provided substantial assistance to law enforcement;
- M8 - The Guidelines sentence calls for incarceration but the defendant cannot be adequately protected or treated in any available prison facility;
- M9 - The consecutive/concurrent sentencing policy results in a Guidelines sentence so excessive in relation to the seriousness of the offense and the history of the defendant that imposition of the Guidelines sentence would result in manifest injustice; and
- M10 - Any other substantial and compelling basis, similar to those articulated in the Guidelines, to depart downward.

Table 6 displays a detailed breakdown of the departure reasons by severity groups.

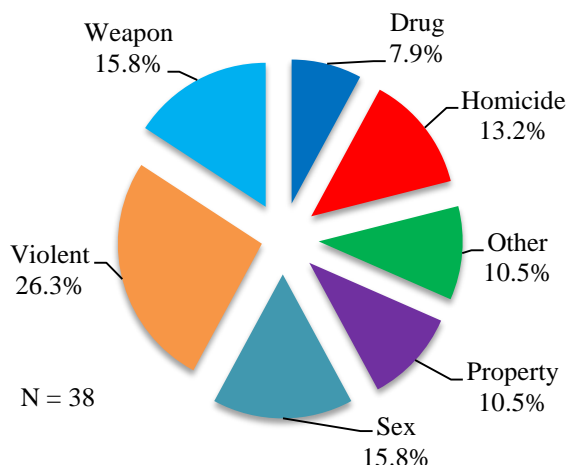
Table 6: Departure Reasons by severity Group

Severity Group	Departure Reasons (N=38)								Total
	A1	A10	A11	M6	M7	M8	M9	M10	
D2					1	1			2
D3								1	1
M2			1		4				5
M3			1						1
M4	2								2
M5					3		2	3	8
M6			4						4
M7			2		2		1	1	6
M8			2	2	1			2	7
M9		1			1				2
Total	2	1	10	2	12	1	3	7	38

There were 13 aggravating (or upward) departures in 2013, while 25 counts were sentenced based upon mitigating (or downward) departures, where the judges chose to impose a less severe sentence than the recommended Guidelines sentence. The total number of aggravating departures increased by eight counts compared to 2012. Violent offenses constituted a greater proportion of compliant departures, as shown in Figure 16 below. This is in contrast to 2012, when drug offenses formed the largest proportion (43.8%) of compliant departures. However,

the limited total number of compliant departures restricts in-depth analysis of departures based upon offense type.

Figure 19: Percentage of Total Compliant Departures



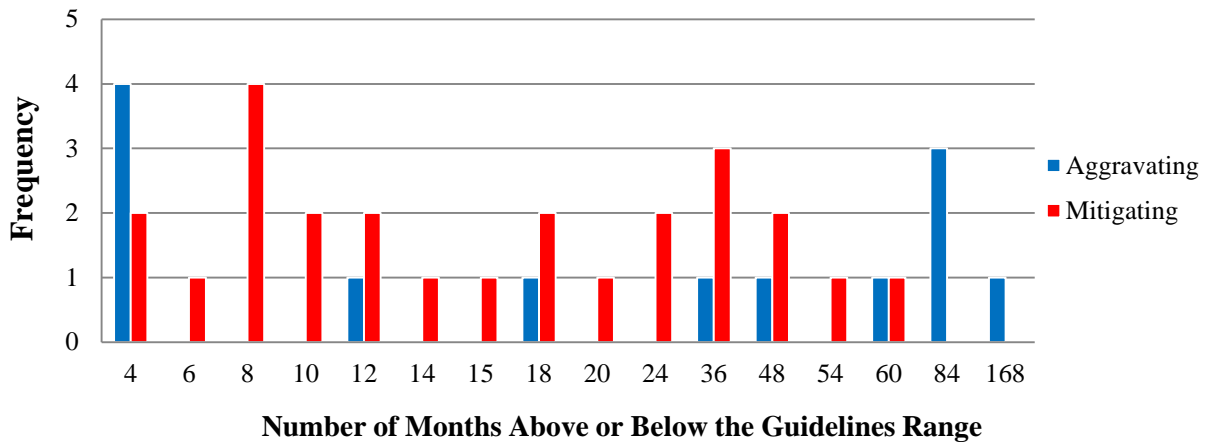
Of the 13 aggravating departures, the two A1 departures were imposed in cases of aggravated assault while armed (OSG M4); the A10 departure was imposed for Conspiracy (OSG M9); and the ten A11 departures were imposed for second degree murder while armed (OSG M2), armed carjacking (OSG M3), attempted first degree child sex abuse (OSG M6), second degree burglary (OSG M7), and attempted second degree child sex abuse (OSG M8).⁵⁶

Of all compliant departures, 25 were mitigating departures but only seven were cited as M10 “catch-all” departures. In 2012 and 2011, M10, the catch-all mitigating departure principle, was the most common mitigating departure reason cited. In 2013, judges cited the catch-all mitigating departure less than the substantial assistance to law enforcement (M7) departure, representing a change from the prior two years.

Aggravating departures deviated widely from their respective top-of-the-box sentencing recommendation, as seen in Figure 20. The average number of months by which aggravating departures departed was 46.9 months. Mitigating departures did not deviate nearly as much, averaging 21.6 months below the bottom-of-the-box sentencing recommendation.

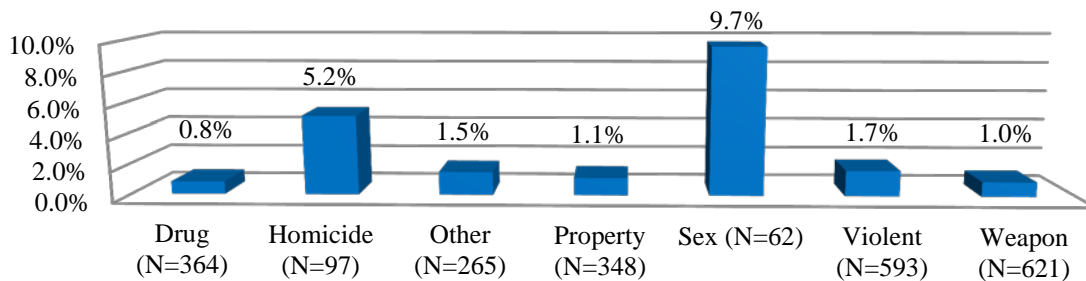
⁵⁶ See Appendix D for definitions of the cited departure principles.

Figure 20: Range of Compliant Departures (N=38)



As seen in Figure 21, sex offenses were the most likely offense category to result in a compliant departure. It should be noted that all sex offense departures were based on an aggravating departure principle. It is difficult to draw any meaningful conclusions from this statistic because of the limited total number of sex offense counts (62) and given that one case accounted for five out of the six total aggravating sex offense departures (83.3%).

Figure 21: Percentage of Compliant Departures within Each Offense Category



D. Rule 11(e)(1)(C) Departures

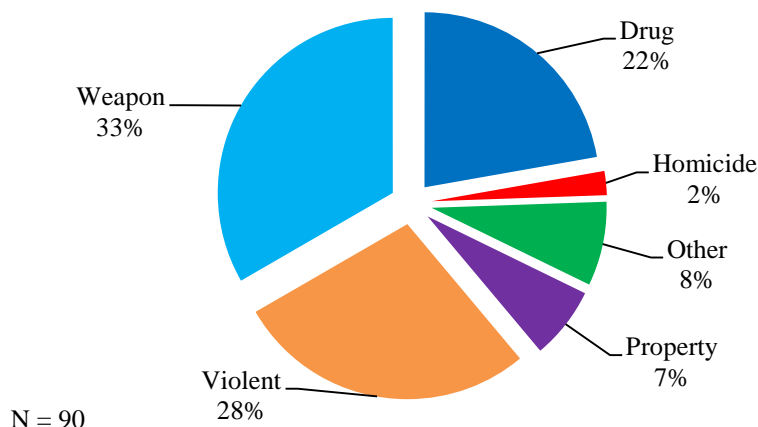
In 2013, judges imposed sentences outside of the recommended Guidelines range in 37 cases and 53 counts resulting from Rule 11(e)(1)(C) pleas. Fourteen of these cases involved homicide convictions and ten of the cases involved at least one violent offense. The Guidelines consider all Rule 11(e)(1)(C) guilty pleas as compliant because the parties agree to, and the judge approves, a specific sentencing at the time the plea is entered.

E. Non-Compliant Departures

A sentence is considered a non-compliant departure when the judge imposes an out-of-the-box sentence without citing a departure principle. In 2013, there were 90 counts that were the result

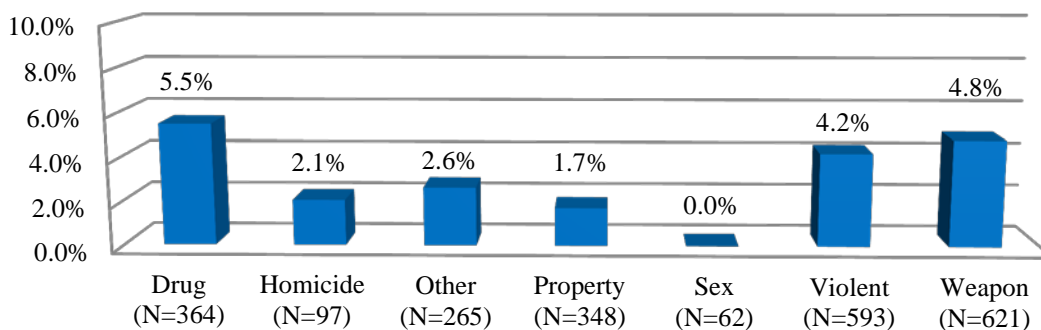
of non-compliant departures, which constituted 3.9% of all sentences for which compliance was calculated. According to the data presented in Figure 22, weapon offenses accounted for the greatest proportion of all non-compliant sentences, followed by violent offenses.

Figure 22: Non-Compliant Departures



When examining non-compliant departures within each offense category (Figure 23 below), drug offenses represented the highest rate (5.5%) of non-compliant departures. The percentage of non-compliant sentences for the remaining offense types were comparable to each other, ranging between 0% and 5%. There were no non-compliant sentences imposed for sex offenses.

Figure 23: Percentage of non-Compliant Sentences within Each Offense Category



IV. Conclusion

Since their inception, judicial compliance with the Guidelines has been consistently near, or above 90% every year. In 2013, the compliance rate was over 96%. Similar to the overall judicial compliance rate, the percentage of in-the-box sentences was also above 90% in 2013. The high compliance rate is likely the result of several factors, including the fact that Superior Court judges are comfortable with and accustomed to using the Guidelines and the wide

sentencing range available within each grid box. However, the data indicate that in the future, the Commission should research and analyze how the sentencing range available in each Master Grid and Drug Grid box impacts the compliance rate.

In 2013, the Commission noted some significant changes in the use of compliant departures. Overall, there were 19 fewer compliant departures recorded than in 2012. This can be partially explained by the reduction in total counts for which compliance was calculated, 2,735 in 2012 compared to 2,350 counts in 2013. Of the compliant departures recorded, 34% were based upon an aggravating factor and 66% were based upon a mitigating factor. This is also a substantial difference from 2012, in which only nine percent (5 total counts) of the compliant departures were based upon aggravating factors. The Commission should continue to closely monitor the number and percentage of aggravating compliant departures to see if this increase continues.

It is hard to draw firm conclusions from the data on mitigating departures because of the very limited numbers of counts recorded (25). However, it is important to note that, for the first time since the Commission began reporting mitigating departure reasons in the annual report in 2010, the catch-all mitigating factor was not the most common mitigating factor cited by judges. Similar to 2012, downward compliant departures were more frequent than upward departures; however, on average, upward departures tended have a greater deviation from the top of the in-the-box sentencing range.

Moving forward, the Commission will utilize the new GRID system to identify and analyze trends related to both the imposition of compliant and non-compliant sentences. This information will provide further insight into the factors that contribute to the imposition of outside-the-box sentences and enable the Commission to make informed decisions regarding potential changes to the Guidelines to further the goal of promoting fair and consistent sentencing in the District.

CHAPTER SIX

CRIMINAL CODE REVISION PROJECT

The Council of the District of Columbia has directed the Commission to review and develop recommendations for revisions to the District of Columbia's criminal laws. This chapter provides an overview of the Criminal Code Revision Project (the Project) and describes the Commission's 2013 activities and accomplishments related to the Project.

In the past year, the Commission developed a comprehensive Project Management Plan that outlines Project priorities, establishes milestones, and sets forth a timeline. The Commission also made significant progress towards accomplishing the goals for code revision set forth in the Project Management Plan. The Commission has, among other things, drafted general provisions that will provide for a more clear and consistent criminal code, reorganized existing criminal offenses into a more logical and user-friendly order, and begun the revision of District property offenses. To date, the Project has met the timeline and milestones described in the Project Management Plan.

I. Legislative Mandate

In 2006, the Council enacted the Advisory Commission on Sentencing Amendment Act, making the preparation of comprehensive recommendations for revision of District criminal statutes one of the Commission's purposes. Specifically, D.C. Code § 3-101.01 states:

- (a) Beginning January 1, 2007, the Commission shall also have as its purpose the preparation of comprehensive recommendations to the Council and the Mayor that:
 - (1) Revise the language of criminal statutes to be clear and consistent;
 - (2) In consultation with the Codification Counsel in the Office of the General Counsel for the Council of the District of Columbia, organize existing criminal statutes in a logical order;
 - (3) Assess whether criminal penalties (including fines) for felonies are proportionate to the seriousness of the offense, and, as necessary, revise the penalties so they are proportionate;
 - (4) Propose a rational system for classifying misdemeanor criminal statutes, determine appropriate levels of penalties for such classes; and classify misdemeanor criminal statutes in the appropriate classes;
 - (5) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate;
 - (6) Identify criminal statutes that have been held to be unconstitutional;
 - (7) Propose such other amendments as the Commission believes are necessary; and
 - (8) Enable the adoption of Title 22 as an enacted title of the District of Columbia Official Code.

- (b) No later than March 31, 2007, the Commission shall submit to the Council and the Mayor a work plan and schedule for carrying out the responsibilities authorized by this section. The work of the Commission under this section shall be completed no later than September 30, 2016.
- (c) The Commission shall submit its recommendations for criminal code revisions in the form of reports. Each report shall be accompanied by draft legislation or other specific steps for implementing the recommendations for criminal code revisions.

The Report from the Committee on the Judiciary explained that:

“The existence of overlapping provisions and confusing or outdated language, penalties that are disproportionate to the crime or disparate from penalties of similar crimes, and other inconsistencies impede the fair and just administration of the law. Criminal code reform would encompass analysis of the current criminal code and propose reforms to the code that create a uniform and coherent body of criminal law in the District of Columbia.”⁵⁷

II. Project History and Background

In response to the Council’s mandate to revise the District’s criminal statutes, the Commission established a Criminal Code Revision Committee (CCR Committee) and tasked it with primary responsibility for developing code revision recommendations. The CCR Committee is comprised of five Commission members with diverse and balanced backgrounds.⁵⁸ Overall responsibility and final approval of all recommendations to the Council remains with the full Commission.

Even with staffing constraints, early CCR Committee work addressed the Council’s mandate to revise felony fines to be proportionate to the seriousness of the offenses. On January 11, 2011, the Commission recommended legislation to the Council that was advanced as the Criminal Fine Proportionality Act of 2011. The legislation standardized fines for crimes by correlating the

⁵⁷ CHAIRMAN PHIL MENDELSON, COUNCIL OF THE DISTRICT OF COLUMBIA COMM. ON THE JUDICIARY, REPORT ON BILL 16-172, THE “ADVISORY COMMISSION ON SENTENCING AMENDMENT ACT OF 2006,” B16-172, 16th Council Period, at 1-2 (2006).

⁵⁸ Mr. Ronald Gainer, a retired attorney formerly employed by the United States Department of Justice, serves as the chairman of the CCR Committee. Chairman Gainer is an expert in criminal law reform and has written extensively on the topic. The remaining committee members include: Professor Donald Braman, Associate Professor of Law at the George Washington University School of Law; Ms. Renata Kendrick Cooper, Special Counsel to the United States Attorney for the District of Columbia (Policy and Legislation); Ms. Laura Hankins, Special Counsel for the Public Defender Service of the District of Columbia; and Mr. Dave Rosenthal, Senior Assistant Attorney General in the Office of the Attorney General for the District of Columbia. Ms. Patricia Riley, Special Counsel to the United States Attorney for the District of Columbia, previously served on the CCR Committee before she was succeeded in 2012 by Ms. Renata Kendrick Cooper.

designated fine amount with the maximum term of imprisonment, ensuring a system of proportionate fines within the District. In 2012, the Council approved the Criminal Fine Proportionality Act of 2011, retitled as The Criminal Fine Proportionality Act of 2012. The new fine structure went into effect June 1, 2013.⁵⁹

In FY 2013, the Council provided the agency with additional resources to staff the Project with a full time project director, two attorney advisors, and two staff counsels. The Council also revised the deadline for Project completion to September 30, 2016.⁶⁰

III. Code Revision Methodology

To guide the development of recommendations on criminal code revision, the Commission created a Project Management Plan and a standardized process for implementing the priorities in the Project Management Plan.

A. Project Management Plan Design

In early 2013, the Commission developed a Project Management Plan that describes priorities for the Project, sets milestones for overall progress, and includes a detailed timeline. The Project Management Plan was approved by the full Commission on March 19, 2013, and presented to the Council in April 2013.

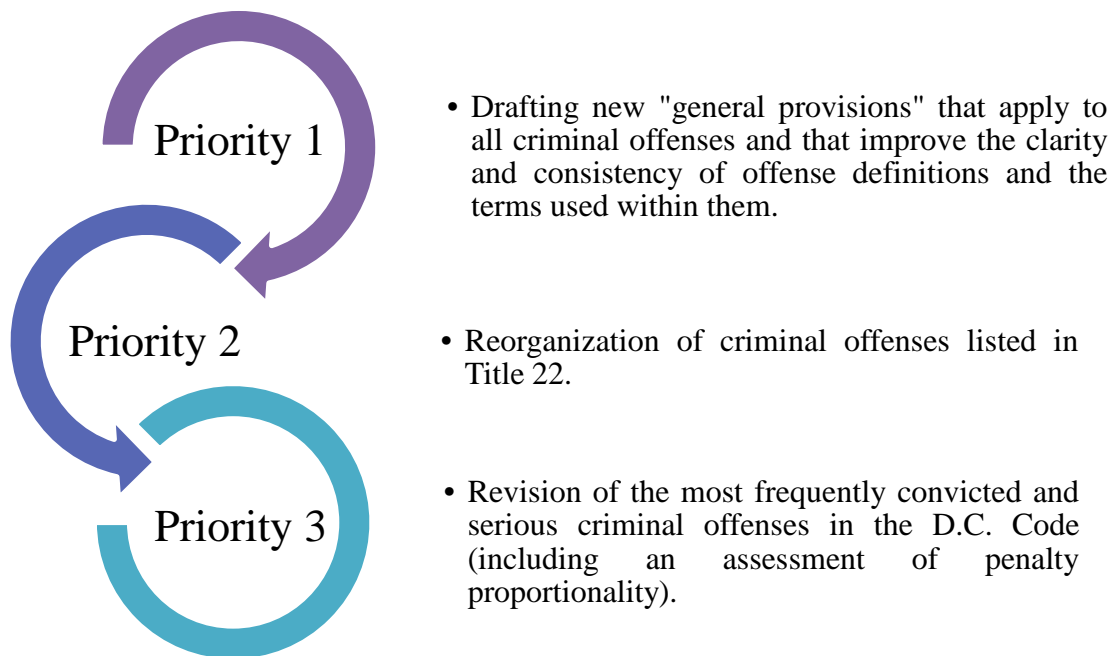
Commission analysis in early 2013 identified hundreds of statutory subsections that are potentially within the scope of the Council’s mandate to issue recommendations on “criminal statutes.” In addition to the hundreds of crimes that are contained in Title 22 of the D.C. Code, there are numerous offenses in other titles. Regardless of their current location in the D.C. Code, each of these statutory provisions requires revision, offenses must be reorganized, and new general statutory provisions that provide consistent definitions and clarification for existing offenses must be added to the code.

After studying the scope of the Project’s mandate and considering resource and time constraints, the Commission identified the three top priorities set forth in Figure 24, below, for its preparation of recommendations for criminal code revision.

⁵⁹ See Criminal Fine Proportionality Act of 2012, 2012 D.C. Laws 19-317, A19-641 (2012); Criminal Fine Proportionality Emergency Amendment Act of 2013, A20-45, B20-0185 (2013) (an emergency act to provide a definitive effective date of June 1, 2013, for the new fine structure established by A19-641).

⁶⁰ Sentencing and Criminal Code Revision Modification Clarification Amendment Act of 2012, Subtitle of Fiscal Year 2013 Budget Support Act of 2012, 2012 D.C. Laws 19-168, A19-385, Sec. 3031-32 (2012); Fiscal Year 2013 Budget Request Act of 2012, 2012 D.C. Laws A19-381, Sec. 2 (2012).

Figure 24: Code Revision Project Priorities



Priority 1: General Provisions

The first Project priority - drafting new “general provisions” refers to the practice of codifying common definitions and principles of liability that apply to all criminal offenses. All states that have undergone comprehensive code revision in the last 50 years have adopted general provisions. General provisions improve a criminal code’s clarity and consistency by replacing the varied, sometimes conflicting, terminology and definitions used in particular offenses that were enacted separately over many years. General provisions also make criminal law more accessible to the public because definitions and principles are described in the criminal code rather than in scattered court decisions.

The most far-reaching general provisions concern the mental state requirements for offenses. These provisions define certain mental states (e.g. recklessly or knowingly) and sets forth requirements and rules of statutory construction related to mental states. However, general provisions also include other important rules and principles, such as how ignorance or mistakes affect criminal liability. Figure 25, below, lists the ten general provision topics that the Commission identified for revision in the Project Management Plan.

Figure 25: Project Management Plan: General Provision Topics to Be Reviewed



Priority 2: Reorganization of Title 22

The second Project priority—the reorganization of criminal offenses in Title 22 of the D.C. Code—aims to create a logical, user-friendly, structure for the District’s criminal code. Criminal codes like the District’s are confusing for both legal practitioners and the public because they do not always group similar offenses together and often include extraneous information besides offense definitions and penalties. Nearly all states that have undergone comprehensive criminal code revision in recent decades have organized their offenses into categories based on the societal interests that the crimes violate (e.g. offenses against property are grouped together). Because reorganization of offenses highlights the relationship between offenses, showing where offenses overlap or where gaps exist, the Commission chose to reorganize offenses before revising specific offenses.

Priority 3: Revising the Most Serious and Frequent Offenses

The third and most time-intensive Project priority is revision of the most frequently convicted and serious criminal offenses. In 2013, the Commission identified 37 offenses and offense types that collectively accounted for over 95% of 2012 felony convictions.⁶¹ These offenses, listed in Appendix E of this report, include all major kinds of crime—property crimes, drug and weapon offenses, crimes against persons, and offenses affecting government operations. These offenses also include many so-called “common law” crimes (e.g. manslaughter and assault), which are

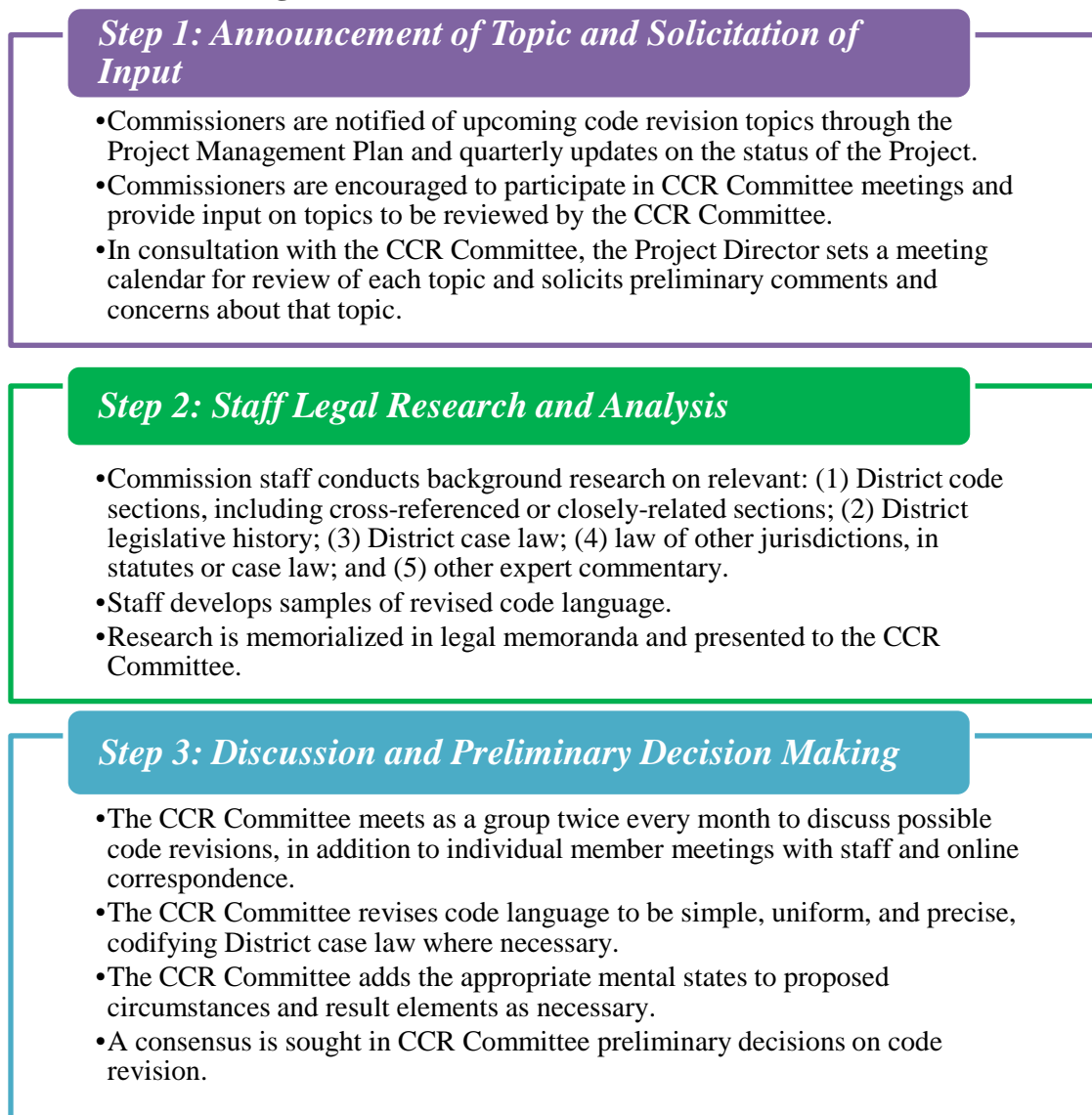
⁶¹ This tally includes the different degrees, lesser included offenses, attempt, and while armed variants of the offenses listed in Appendix E, below.

fully defined only in judicial decisions. Revision of these 37 offenses and offense types will necessitate review of dozens of other statutory provisions that define terms used in the offenses and contain closely related felonies and misdemeanors. Revision of these target offenses and offense types will modernize the core of the District's criminal code.

B. Project Management Plan Implementation Process

To pursue the Project Management Plan revision priorities, the Commission developed a standard code revision procedure that applies to each of the three priorities: drafting general provisions (Priority #1); creating a new organization for offenses (Priority #2); and revising specific felony offenses (Priority #3). The process is described in Figure 26, below.

Figure 26: Standard Criminal Code Revision Procedure



Following this basic three-step process, the CCR Committee compiles recommendations that address each of the topics. As tentative agreement is reached with respect to each topic, those recommendations are compiled to form a draft Revised Basic Criminal Code which, when complete and approved by the full Commission, will be the centerpiece of the Commission's recommendations to the Council. An accompanying Commentary will provide clarification about the intended effect of the recommended revisions and, as necessary, identify supporting authorities for changes.

Until the Project nears completion in 2016, all CCR Committee code revisions are considered "preliminary" in the sense that they are subject to ongoing review in light of additional code revision work. This ongoing review is required to ensure consistency and clarity of the criminal code as a whole because new offense revisions might affect prior revision language.

IV. Milestones & Deliverables to Date

After an initial planning period at the beginning of 2013, code revision has proceeded according to the schedule of milestones and completion dates that guide the entire Project. The CCR Committee has completed the first two milestones and work has begun on the third milestone that is due in May 2014.

A. Milestones

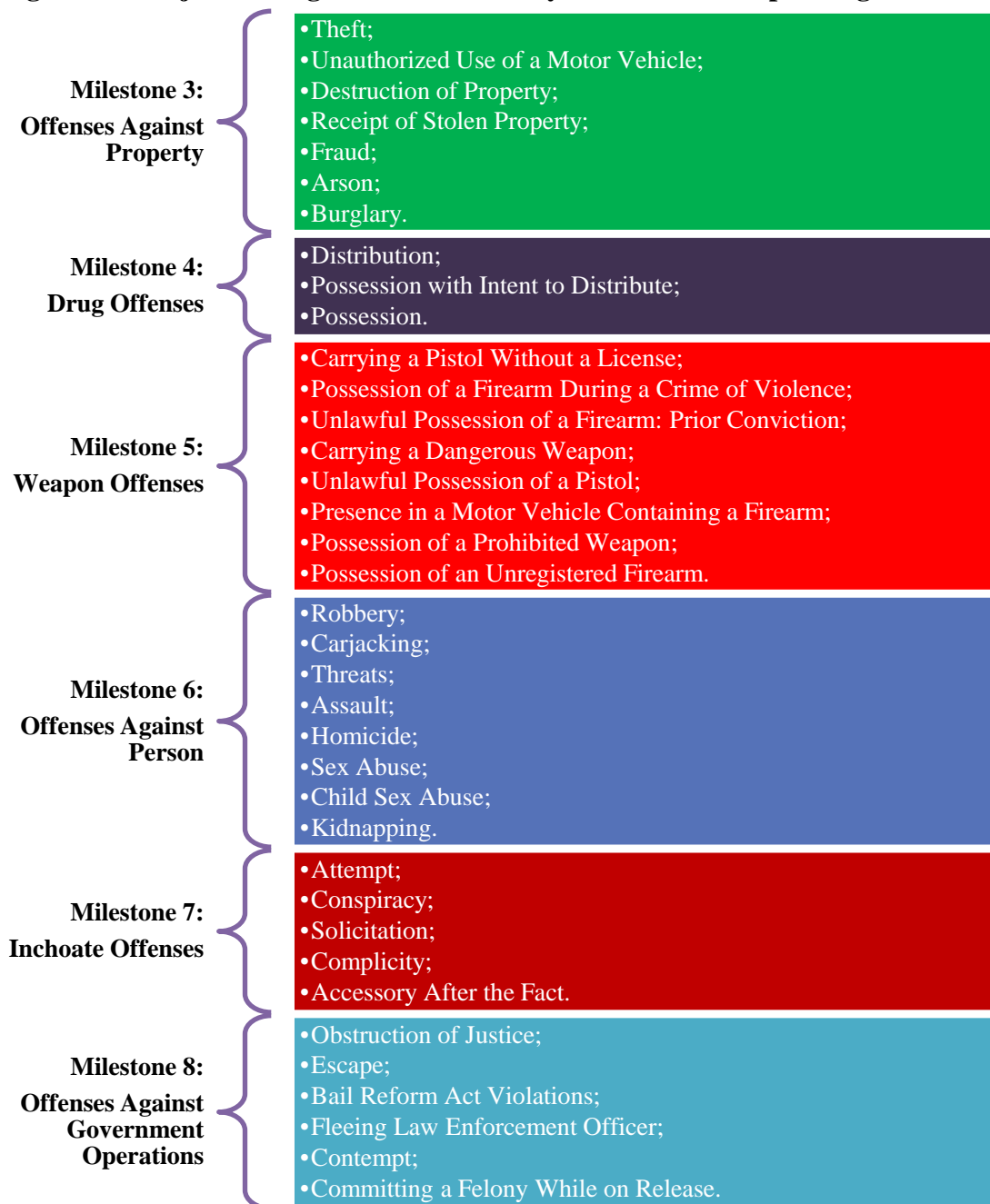
The Project Management Plan establishes twelve milestones with target completion dates. These milestones pace the CCR Committee's work and allow the Commission to monitor overall progress on the Project. The timeline in Figure 27, below, provides an overview of the Project's milestones.

Figure 27: Project Management Plan Milestones



Milestones 3-8, represented in the third block above, represent the largest and most time-intensive portion of the Commission’s work on code revision. These milestones correspond to particular groups of District offenses as shown in Figure 28, below.

Figure 28: Project Management Plan: Felony Offenses Corresponding to Milestones 3-8



As the Project nears completion in 2016, the Project Management Plan specifies that the CCR Committee review penalties and proportionality, milestone 9. Such a review of proportionality will determine whether any crimes are punished too lightly or harshly by comparing offenses revised in milestones 3-8.

- In the closing months of the Project, as defined in the Management plan, the CCR Committee will review all of its draft recommendations and present them to the full

Commission. After a final review, the Commission will submit its recommendations for the Revised Basic Criminal Code to the Council. These final steps correspond to milestones 10-12 of the Project Management Plan. The Commission will also submit to the D.C. Council and Mayor recommendations as to further Criminal Code revision that the Commission may propose undertaking.

B. Deliverables to Date

Milestone #1: General Provisions

Drafting new general provisions for the D.C. Code was the focus of the CCR Committee for the majority of the year and was completed in September 2013. The CCR Committee evaluated multiple general provision topics (see Figure 21 above) for possible inclusion in the revised Title 22, giving particular attention to the creation of standardized definitions of the mental states that must be proven for criminal offenses. In the end, preliminary agreement was reached on the addition of eleven new sections to Title 22 that will comprise general provisions applicable to all revised offenses (see Figure 29, below).

While the CCR Committee reviewed all the general provision topics listed in Figure 21, above, it ultimately decided that drafting statutory language for two of these topics was not proper. First, with respect to causation, the Committee decided that codifying the doctrine of causation that exists in District case law would not significantly advance the clarity and consistency of the Code. Second, with respect to possession liability, the Committee decided that this topic is best addressed in the context of specific statutes (e.g. possession of a controlled substance) rather than in a general provision. Other apparent differences between Figure 25 and Figure 29 are due to reordering, relabeling, or combining in one statutory section the topics listed in the Project Management Plan for review.

Figure 29: Drafted General Provisions

General Provisions

- **Chapter 1. Preliminary Provisions**
 - Section 101. Short Title
 - Section 102. Effect of Headings and Captions
 - Section 103. Interaction With Other Code Provisions
 - Section 104. General Definitions
- **Chapter 2. Requirements for Criminal Liability**
 - Section 201. Burden of Proof and Presumption of Innocence
 - Section 202. Conduct Requirement
 - Section 203. Offense Element Definitions
 - Section 204. Voluntariness
 - Section 205. Mental State Requirements and Rules of Construction
 - Section 206. Mental State Definitions
 - Section 207. Effect of Ignorance or Mistake

As noted above, the CCR draft general provisions are subject to ongoing review and modification as necessary to ensure the clarity and consistency of code revisions as a whole.

Milestone #2: Reorganization of Title 22 Offenses

The second milestone, the reorganization of Title 22 offenses, was completed in October 2013. The CCR Committee considered several alternatives to the alphabetical approach now used in Title 22. Preliminary agreement was reached to reorganize criminal offenses based on the type of harm involved, making it easier to locate similar crimes. There was also tentative agreement to move many provisions that deal with extraneous criminal justice issues out of Title 22. The CCR Committee developed a macro-level structure for the revised criminal code that consists of 13 subtitles (see Figure 30, below). The CCR Committee further organized the 13 subtitles into chapters and subchapters and tentatively reorganized the hundreds of criminal offense and penalty provisions in Title 22 into the new structure.

Per the revision process described above, CCR decisions on reorganization may be revisited as the Project progresses. Organizational refinements to Title 22 chapters and sub-chapters are expected as new offenses are reviewed and revised. Also, the “common law offenses” subtitle may be removed entirely if these few offenses are fully codified in other subtitles.

Figure 30: Drafted Macro-Level Reorganization of Title 22

Revised Title 22	Subtitle I. General Provisions
	Subtitle II. Inchoate Offenses
	Subtitle III. Offenses Against Persons
	Subtitle IV. Offenses Against Property
	Subtitle V. Offenses Against Government
	Subtitle VI. Offenses Against Public Order
	Subtitle VII. Offenses Against Public Decency
	Subtitle VIII. Weapon Offenses
	Subtitle IX. Drug Offenses
	Subtitle X. Motor Vehicle and Traffic Offenses
	Subtitle XI. Prison Misconduct
	Subtitle XII. Common Law Offenses
	Subtitle XIII. Penalties

Milestone #3: Revision of Property Offenses

The CCR Committee began working on the third milestone specified in the Project Management Plan, revision of property offenses, in the fall of 2013 and is on schedule for completion in May 2014. The CCR Committee's 2013 work on property offenses involved a joint review of several offenses—including Theft, Unauthorized Use of a Motor Vehicle, and Receipt of Stolen Property—to determine whether and how overlap between these offenses should be addressed. “Overlap” between criminal statutes refers to a situation where separately codified offenses penalize the same or very similar conduct. The Council expressed concern regarding overlapping provisions, noting that in some circumstances they may lead to “inconsistencies [that] impede the fair and equitable administration of justice.”⁶² At the close of 2013, the CCR Committee had completed an initial review of overlap among theft and related property offenses, and will complete that review in 2014.

V. Timeline & Structure of Future Deliverables

In 2014, the Commission, through its CCR Committee and the process described above, plans to complete the revision of specified property (milestone 3), drug (milestone 4) and weapon (milestone 5) offenses before beginning on offenses against persons (milestone 6) at the end of the year.

At the outset of 2014, the CCR Committee will draft revisions to certain property offenses in the D.C. Code (including Theft; Receiving Stolen Property; Unauthorized Use of a Motor Vehicle; Fraud; Burglary; Arson; and Destruction of Property) and then conduct a final review of overlap among these offenses. The revision of these property offenses will incorporate the new general provisions developed by the CCR Committee in 2013, including the new general definitions of mental states necessary for criminal liability.

The remainder of 2014 will focus on drug, weapon, and certain offenses against persons (see Figure 24, above). With one exception, these offenses to be revised in the remainder of 2014 match the list in the Commission's Project Management Plan that was submitted to the Council in April 2013. The crime of “Presence in a Motor Vehicle Containing a Firearm” (PMVCF) (D.C. Code § 22-2511), originally listed in the Project Management Plan for revision in 2014, will not be revised because the statute was recently held to be unconstitutional by the District of Columbia Court of Appeals. Further explanation on the unconstitutionality of PMVCF is given in Section VII at the end of this chapter. Revision of drug offenses is expected to be completed in July 2014 and weapon offenses in November 2014. At this time, a decision has not been made

⁶² CHAIRMAN PHIL MENDELSON, COUNCIL OF THE DIST. OF COLUMBIA COMM. ON THE JUDICIARY, 16TH COUNCIL PERIOD, REP. ON B. 16-172 THE “ADVISORY COMMISSION ON SENTENCING AMENDMENT ACT OF 2006,” at 1 (2006).

about which of the target offenses against persons will be revised first, but initial work on those offenses will begin in November 2014.

VI. Anticipated Project Completion

The Commission intends to complete work on the Project by the September 2016 statutory deadline. At that time, the Commission will deliver to the Council recommendations for the code revision outlined in the Management Plan. The recommendations will include a draft Revised Basic Criminal Code, comprised of all the District statutes that have been revised. The Commission may also submit recommendations as to further Criminal Code revision that the Commission may propose undertaking. An accompanying Commentary will provide clarification about the intended effect of the recommended revisions and, as necessary, identify supporting authorities for changes.

Timely and successful completion of the Project will depend critically on the ability of Commission members to reach agreement on recommendations for revision. In 2013, the Project's work on general provisions and reorganization of the criminal code involved conceptually difficult but often novel and less controversial legal issues. As the Project has shifted to revision of specific offenses, the CCR Committee's work now involves issues where there are established statutes, court decisions, and institutional positions. These additional factors have the potential to complicate and impact the revision process and, therefore, affect the timeline for completion. At present, the CCR Committee is continuing to make progress on the revision of specific offenses. However, it is reasonable to assume that reaching agreement on specific code revisions will be increasingly challenging in the year ahead. The Commission is carefully monitoring the Project's progress and will take all necessary steps to ensure its timely completion.

VII. Notice of Criminal Statute Held to be Unconstitutional

D.C. Code § 3-101.01(a)(6) states that, as part of its criminal code reform efforts, the D.C. Sentencing and Criminal Code Revision Commission is to “[i]dentify criminal statutes that have been held to be unconstitutional.” Accordingly, the Commission hereby provides notice that the crime of “Presence in a Motor Vehicle Containing a Firearm” (PMVCF), codified at D.C. Code § 22-2511, has been held to be unconstitutional. The crime of PMVCF was enacted as part of the Omnibus Public Safety and Justice Amendment Act of 2009.

On September 26, 2013 the District of Columbia Court of Appeals ruled in the case of *Conley v. United States*, 79 A.3d 270, 272 (D.C. 2013) that “the PMVCF statute violates due process.” Deadlines for further review of the decision by the courts have passed, and the *Conley* ruling is now final.

The Commission has removed PMVCF from its list of criminal statutes to be revised in 2014 and will ensure that the Sentencing Guidelines Manual and other publications appropriately reflect this change in District law.

Appendix A

MASTER GRID

		Criminal History Score				
3 Points*	Ranking Group Most Common Offenses	0 to ½ A	¾ to 1¾ B	2 to 3¾ C	4 to 5¾ D	6 + E
	Group 1 1st degree murder w/armed 1st degree murder	360 - 720	360 - 720	360 - 720	360 - 720	360 +
	Group 2 2nd degree murder w/armed 2nd degree murder 1st degree sex abuse 1st degree sex abuse w/armed	144 - 288	156 - 300	168 - 312	180 - 324	192 +
	Group 3 Voluntary manslaughter w/armed 1st degree child sex abuse Carjacking while armed Assault with intent to kill w/armed Armed burglary I	90 - 180	102 - 192	114 - 204	126 - 216	138 +
	Group 4 Aggravated assault w/armed Voluntary manslaughter	48 - 120	60 - 132	72 - 144	84 - 156	96 +
	Group 5 Possession of firearm /CV Armed robbery Burglary I Obstruction of justice Assault with intent to kill	36 - 84	48 - 96	60 - 108	72 - 120	84 +
2 Points*	Group 6 ADW Robbery Aggravated assault 2nd degree child sex abuse Assault with intent to rob	18 - 60	24 - 66	30 - 72	36 - 78	42 +
	Group 7 Burglary II 3rd degree sex abuse Negligent homicide Assault w/I to commit mayhem Unlawful Poss. of a Firearm (prior fel.)	12 - 36	18 - 42	24 - 48	30 - 54	36 +
1 Point*	Group 8 Carrying a Pistol (formerly CPWL) UUV Attempt robbery Attempt burglary 1st degree theft Assault w/Significant Bodily Injury	6 - 24	10 - 28	14 - 32	18 - 36	22 +
	Group 9 Escape/prison breach BRA Receiving stolen property Forgery/Uttering Fraud	1 - 12	3 - 16	5 - 20	7 - 24	9 +
*Criminal History Points for prior convictions in these groups.						
White/unshaded boxes – prison only.						
Dark shaded/green boxes – prison or short split permissible.						
Light shaded/yellow boxes – prison, short split, or probation permissible.						

Appendix B

DRUG GRID

		Criminal History Score				
	Ranking Group Most common offenses	0 to ½ A	¾ to 1¾ B	2 to 3¾ C	4 to 5¾ D	6 + E
2 Points*	Group 1 Distribution w/a (any drug) PWID w/a (any drug)	30-72	36-78	42-84	48-90	54+
1 Point*	Group 2 Distribution or PWID (Schedule I or II narcotic/ abusive drugs)	12-30	16-36	20-42	24-48	28+
	Group 3 Distribution or PWID (except Schedule I or II narcotic or abusive drugs) Attempt Distribution or Attempt PWID (Schedule I or II narcotic/ abusive drugs) Possession of Liquid PCP	6-18	10-24	14-30	18-36	22+
¾ Point*	Group 4 Attempt Distribution or Attempt PWID (except Schedule I or II narcotic or abusive drugs) Attempt Possession of Liquid PCP	3-12	5-16	7-20	9-24	11+
*Criminal History Points for prior convictions in these groups.						
White/unshaded boxes – prison only.						
Dark shaded/green boxes – prison or short split permissible.						
Light shaded/yellow boxes—prison, short split, or probation permissible.						

Appendix C

The top five grouped offenses are comprised of the following crimes:

1. Drugs, PWID+Dist:

- i. Drugs -- Distribution or PWID: Schedule I, II Narcotic and abusive drugs (heroin, cocaine, PCP, methamphetamine, etc.)
- ii. Drugs -- Distribution or PWID: Schedule I, II, III Non-narcotic and non-abusive drugs (including marijuana -- 2nd offense or > ½ pound)
- iii. Drugs -- Distribution or PWID: Schedule IV
- iv. Drugs -- Possession of Liquid PCP
- v. Drugs -- Distribution to Minors

2. Drugs, Attempted Offenses:

- i. Drugs -- Attempt or Conspiracy of an offense in Drug Group 1
- ii. Drugs -- Attempt or Conspiracy of an offense in Drug Group 2
- iii. Drugs -- Attempt or Conspiracy of an offense in Drug Group 3

3. Weapons:

- i. Carrying Pistol Without License (CPWL), Carrying Dangerous Weapon (CDW)
- ii. Carrying Pistol Without License (CPWL), Carrying Dangerous Weapon (CDW) 2nd+ offense or after felony conviction
- iii. Firearm, Presence in a Motor Vehicle Containing: Prior gun conviction or felony
- iv. Firearm, Presence in a Motor Vehicle Containing
- v. Firearm, Unlawful Possession of by a person with a prior conviction > 1 yr
- vi. Firearm, Unlawful Possession of by a person with a prior conviction > 1 yr and COV other than Conspiracy
- vii. Firearm, Unlawful Possession of by others

4. Assault:

- i. Aggravated Assault while armed
- ii. Aggravated Assault
- iii. Aggravated Assault -- Attempt
- iv. Aggravating Circumstance
- v. Assault with a Dangerous Weapon (ADW)
- vi. Assault on Police Officer (APO) while armed
- vii. Assault on Police Officer (APO)
- viii. Assault on Police Officer (APO) w/ deadly weapon -- 2nd+ offense or prior felony
- ix. Assault with Intent to Kill or Poison while armed

- x. Assault with Intent to Kill or Poison
- xi. Assault with Intent to Rob while armed
- xii. Assault with Intent to Rob
- xiii. Assault with Intent to 1° or 2° Sexual Abuse or Child Sex Abuse while armed
- xiv. Assault with Intent to 1° or 2° Sexual Abuse or Child Sex Abuse
- xv. Assault with Intent to Commit any other Felony while armed
- xvi. Assault with Intent to Commit any other Felony
- xvii. Assault with Intent to Commit Mayhem while armed
- xviii. Assault with Intent to Commit Mayhem
- xix. Assault with Significant Injury

5. Robbery:

- i. Robbery -- while armed
- ii. Robbery
- iii. Robbery -- Attempt while armed
- iv. Robbery -- Attempt

Appendix D

Departure Factors

Aggravating Factors

- (1) There was deliberate cruelty to a victim or there was gratuitous violence inflicted upon a victim in a manner substantially beyond that normally associated with this offense.
- (2) A victim was particularly vulnerable due to age or reduced physical or mental capacity, which was known or should have been known to the defendant, unless that vulnerability constituted an element of the offense of conviction.
- (3) A victim sustained a “devastating injury.” Devastating injury is defined as a physical or mental injury that results in one or more of the following:
 - (a) Permanent and substantial impairment of the person’s employment opportunity and/or lifestyle;
 - (b) Permanent, gross disfigurement; or
 - (c) Medical confinement and/or immobilization for a period of more than three months.
- (4) The crime committed or attempted was substantially premeditated, as evidenced by a high degree of planning or sophistication or planning over an extended period of time.
- (5) The defendant committed for hire or hired another to commit any one of the following offenses: Murder; Manslaughter; First-Degree Sexual Abuse; Kidnapping; Mayhem/Malicious Disfigurement; Aggravated Assault; Assault with intent to commit any of the foregoing; Assault with intent to kill; Assault with a Deadly Weapon; or Arson.
- (6) The offense was part of an enterprise significantly related to organized crime or high-level drug trafficking. This aggravating factor does not apply in cases charging only distribution or possession with intent to distribute a controlled substance where the defendant’s only connection to organized crime or high-level drug trafficking is street- level drug trafficking.
- (7) The defendant threatened, bribed, attempted to bribe, induced, or attempted to induce a victim, a member of the victim’s family, or a potential witness, or any other person to withhold truthful testimony or provide false testimony, or otherwise attempted to obstruct justice, unless the defendant is separately convicted of an offense that arises out of the same conduct.
- (8) The offense is a violation of Chapter 32 of Title 22 of the D.C. Official Code, which involves an intended or actual monetary loss substantially greater than what would normally be associated with the offense or any one or more of the following:
 - (a) The offense(s) involved multiple victims or multiple incidents per victim;
 - (b) The defendant has been involved in other conduct similar to the current offense(s) as evidenced by the findings of criminal, civil or administrative law proceedings or the imposition of professional sanctions; and/or
 - (c) The defendant used his or her position of confidence or fiduciary responsibility to facilitate the commission of the offense(s).

(9) The offender, in attempting to gain or while holding public office by appointment or election, betrayed the public trust by his or her unlawful conduct.

(10) The consecutive/concurrent sentencing policy results in a guideline sentence so lenient in relation to the seriousness of the offense and the history of the defendant that imposition of the guideline sentence would result in manifest injustice. A departure based solely on this factor shall not result in a sentence that exceeds the sentence that would result if all guideline sentences were consecutive.

(11) There is any other substantial and compelling basis, as articulated by the sentencing judge, comparable in gravity to those listed in 1 to 10 above, which aggravates substantially the seriousness of the offense or the defendant's culpability.

Note: Going to trial is not an aggravating factor and should not be used to go outside of the box.

Mitigating Factors

(1) A victim was an aggressor, initiator, willing participant in, or provoker of the incident to such a degree that the defendant's culpability is substantially less than that typically associated with the offense.

(2) Before detection in a crime other than a crime of violence, the defendant compensated or made a good faith effort to compensate the victim(s) for any damage or injury sustained.

(3) The defendant participated under duress, coercion, threat or compulsion insufficient to constitute a complete defense, but which significantly reduces the defendant's culpability.

(4) The offense was principally accomplished by another, and the defendant manifested extreme caution or sincere concern for the safety and well-being of a victim.

(5) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(6) The defendant's capacity to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired significantly, though not sufficiently to constitute a complete defense. Voluntary use of alcohol or other drugs should not be considered in relation to this mitigating factor.

(7) The defendant has provided substantial assistance to law enforcement in the detection or prosecution of other offenders, and departure for this reason does not demean the seriousness of the defendant's crime or create an unacceptable risk to the safety of the community.

(8) The guideline sentence calls for a prison sentence but, after consultation with corrections authorities, the court determines that the defendant, by reason of obvious and substantial mental or physical impairment or infirmity, cannot be adequately protected or treated in any available prison facility.

(9) The consecutive/concurrent sentencing policy results in a guideline sentence that is so excessive in relation to the seriousness of the offense and history of the defendant that imposition of the guideline sentence would result in manifest injustice. A departure based solely on this

factor shall not result in a sentence that is less than the sentence that would result if all guideline sentences were concurrent.

(10) There is any other substantial and compelling basis, as articulated by the sentencing judge, comparable in gravity to those listed in 1 to 9 above, which does not amount to a defense but which substantially mitigates the seriousness of the offense or the defendant's culpability.

Appendix E

Project Management Plan: 2012 Common Felony Convictions To Be Reviewed

Offense/Offense Type	Code Section
1. Theft	D.C. Code § 22-3211
2. Unauthorized Use of Motor Vehicle	D.C. Code § 22-3215
3. Destruction of Property	D.C. Code § 22-303
4. Receipt of Stolen Property	D.C. Code § 22-3232
5. Fraud	D.C. Code § 22-3221
6. Arson	D.C. Code § 22-301
7. Burglary	D.C. Code § 22-801
8. Drug Possession	D.C. Code § 48-904.01
9. Drug Possession with Intent to Distribute	D.C. Code § 48-904.01
10. Drug Distribution	D.C. Code § 48-904.01
11. Carrying a Pistol Without a License	D.C. Code § 22-4504(a)
12. Possession of Firearm While Committing Crime of Violence or Dangerous Crime	D.C. Code § 22-4504(b)
13. Unlawful Possession of a Firearm (Prior Conviction)	D.C. Code § 22-4503(a)(1)
14. Carrying a Dangerous Weapon	D.C. Code § 22-4504(a)
15. Unlawful Possession of a Pistol	D.C. Code § 22-4504(a)
16. Presence in a Motor Vehicle Containing a Firearm	D.C. Code § 22-2511(c)(1)
17. Possession of a Prohibited Weapon	D.C. Code § 22-4514
18. Possession of Unregistered Firearm	D.C. Code § 7-2502.01
19. Robbery	D.C. Code § 22-2801
20. Carjacking	D.C. Code § 22-2803a
21. Threats	D.C. Code § 22-1810
22. Assault	D.C. Code §§ 22-401 - 406
23. Murder	D.C. Code §§ 22-2101 - 2106
24. Sex Abuse	D.C. Code §§ 22-3002 - 3005
25. Child Sex Abuse	D.C. Code §§ 22-3008 - 3009
26. Kidnapping	D.C. Code § 22-2001
27. Attempt	D.C. Code § 22-1803
28. Conspiracy	D.C. Code § 22-1805a
29. Solicitation	D.C. Code § 22-2107
30. Complicity	D.C. Code § 22-1805
31. Accessory After the Fact	D.C. Code § 22-1806
32. Obstructing Justice	D.C. Code § 22-722
33. Escape	D.C. Code § 22-2601
34. Bail Reform Act	D.C. Code § 23-1327
35. Fleeing a Law Enforcement Officer	D.C. Code § 50-2201.05b
36. Contempt	D.C. Code § 11-944
37. Committing a Felony while on Release	D.C. Code § 23-1328