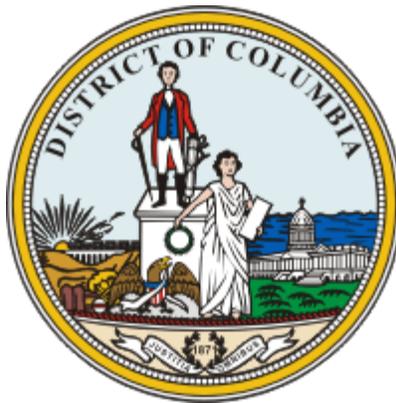




DISTRICT OF COLUMBIA SENTENCING AND  
CRIMINAL CODE REVISION COMMISSION  
2010 ANNUAL REPORT



APRIL 29, 2011

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, and to evaluate the effectiveness of the guidelines system in order to recommend changes based on actual sentencing and corrections practice and research.*

 District of Columbia  
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Code Revision Commission

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April 28, 2011

The Honorable Kwame Brown, Chairman  
Council of the District of Columbia  
John A. Wilson Building, Suite 504  
1350 Pennsylvania Avenue NW  
Washington, DC 20004

Dear Chairman Brown:

In compliance with its statutory obligation, the District of Columbia Sentencing and Criminal Code Revision Commission respectfully submits its 2011 Annual Report.

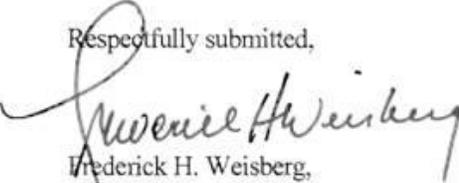
This year's report provides an overview of the activities undertaken by the Commission to improve the quality of its data and to facilitate the electronic transfer of sentencing information from the D.C. Superior Court. The report also presents an analysis of felony sentences in the District from January 1, 2010 through December 31, 2010. Judicial compliance with the Voluntary Sentencing Guidelines reached 96% this year, the highest percentage since their implementation and an indication of their acceptance among both the judiciary and criminal justice practitioners.

The Commission made its first major structural changes to the Guidelines, modifying the Drug Grid, and restructuring the scoring of misdemeanor convictions in criminal history, including the more serious misdemeanors prosecuted by the DC Office of the Attorney General. These changes promote the Commission's goal of ensuring proportionality, fairness and clarity in sentencing.

Finally, the Fine Proportionality Act of 2011, submitted in January for the Council's consideration, reflects the Commission's continuing work on the Criminal Code Revision Project focused on making the District's criminal code more consistent, clear and comprehensive.

This report provides only a summary of the major accomplishments of the Commission; I encourage you to visit our website at: <http://sdc.dc.gov> for a more comprehensive review of our projects and activities.

Respectfully submitted,

  
Frederick H. Weisberg,  
Chairman

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## EXECUTIVE SUMMARY

During 2010, the District of Columbia Sentencing and Criminal Code Revision Commission (the “Commission”) achieved a number of significant goals in furtherance of sound sentencing policy for the District. The Commission completed implementation of the electronic transfer of sentencing data between it and the D.C. Superior Court and also submitted its first recommended legislation to the Council for criminal code reform entitled the “Fine Proportionality Act of 2011.” Finally, the Commission developed the first major structural changes to the Guidelines since their implementation in 2004. These accomplishments were in addition to its continued monitoring and updates to the Voluntary Sentencing Guidelines to ensure that the goals of fairness and consistency are maintained.

### **Data Collection and Analysis**

This year’s report contains a description of improvements the Commission has made to its data transfer and collection practices. Although the Commission has been collecting sentencing data since its inception, there have been ongoing limitations with both the timeliness and the quality of the data available to the Commission. In order to properly monitor and evaluate sentencing practices related to the Guidelines, valid and reliable data is crucial. For a number of years the Commission has attempted to facilitate the electronic transfer of data from the D.C. Superior Court but has encountered significant technology challenges. Through a multi-agency effort, in the past year each technological problem was addressed and resolved. This resulted in the agency receiving a one-time, historic data transfer of approximately 15,000 cases dating back to 2006, and it is currently receiving sentencing data on a daily basis from the Court. The Commission now has a comprehensive sentencing database that will permit an in-depth analysis of the effectiveness of the Guidelines.

To improve its monitoring of judicial compliance with the Voluntary Sentencing Guidelines, the Commission enacted a new protocol for obtaining information about sentences that appear to be non-compliant. This year, the Commission implemented a multi-step process for investigating these apparent non-compliant sentences, which includes a new, user-friendly “Compliance Survey” to query judges about particular cases. This process has significantly increased response rates as well as compliance rates, since many sentences become compliant once the judge provides clarification of a sentence imposed. This year’s compliance rate is approximately 96%, compared to 88.1% reported in 2009. Examining compliance is a vital part of monitoring the effectiveness of the Guidelines and identifying areas that may require modification.

The final data improvement relates to criminal history information the Commission uses in the calculation of the recommended Guidelines sentence. Historically, the Court Services and Offender Supervision Agency (CSOSA) has provided criminal history data to the Commission through a Word document that is then manually entered into the agency’s data base. The process

is both time consuming and vulnerable to data entry errors. The Commission is in the process of replacing the current Word document with an electronic InfoPath form that standardizes data formats, calculates the criminal history score and transfers the data electronically into the agency's database. This change will improve the quality of the Commission's criminal history data and allow for a more efficient use of staff resources.

The analysis of sentences in 2010 shows that the number of cases and counts sentenced are consistent with what the Commission reported in 2009. Likewise, offender race and gender demographics remain stable, although a small group of offenders were recorded without gender identification. There is a minor decrease in the percentage of offenders identified as White, but it is not clear whether this is a true decrease or a result of how an offender's race is being reflected in the data.

As was true in prior years, offenders between 18 and 23 years of age represented the largest age group of offenders sentenced in 2010. However, the largest age group of sentenced female offenders was in the early- to mid-forties. There was a statistically significant, but weak relationship between gender and type of sentence imposed, reflecting a higher percentage of probation sentences for females than for males.

Once again, drug offenses predominated, representing 40% of all charges sentenced during 2010. Violent and weapon offenses accounted for 19% and 18% of sentences respectively. Sex offenses represented only 2% of charges sentenced. Prison terms were imposed for 63.8% of all counts sentenced and probation was imposed in 23.9% of the counts. The remaining 11.4% of sentences were short split sentences.

### **Guidelines Modifications**

The Commission's second major accomplishment in 2010 was to implement structural changes to the Voluntary Sentencing Guidelines for the first time since their implementation in 2004. To ensure that the Guidelines promote sentencing consistency and proportionality, the Drug Grid was modified by adding a fourth Drug Group and adjusting sentencing options available on the grid.

A second structural change affected the calculation of criminal history scores. Criminal history was expanded to include all misdemeanors with a penalty of 90 days or more, including those prosecuted by the D.C. Office of the Attorney General, which previously had not been scored. This revision ensures that serious misdemeanors, regardless of the prosecuting agency or its placement in the District's code, are included in an offender's criminal history. The Commission will continue to explore structural changes of this kind as it fulfills its mission to ensure that similarly situated offenders convicted of similar crimes receive sentences that are comparable and proportional.

## **Criminal Code Revision Project**

Lastly, despite the staffing challenges encumbering the Criminal Code Revision Project, the Commission has made progress and submitted its first set of recommendations entitled “The Fine Proportionality Act of 2011,” to the Council of the District of Columbia in January. The proposed Act would standardize fines for all felony and most misdemeanor offenses within the District of Columbia. This initial recommendation addresses inconsistencies in fine amounts found in the current criminal code and provides for maximum fines that are proportional to the maximum term of incarceration for each specific offense.

## 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”). This influential legislation was responsible for several important changes to the criminal justice system in the District of Columbia. These changes included closing the Lorton Correctional Complex, creating the Court Services and Offender Supervision Agency (CSOSA), and transferring the housing of felony offenders from the D.C. Department of Corrections to the Federal Bureau of Prisons.

The Revitalization Act also created the Truth in Sentencing Commission (the “TIS Commission”), which was directed to develop recommendations to the Council of the District of Columbia on amendments to the District of Columbia Code regarding sentences imposed for felonies committed on or after August 5, 2000. The TIS Commission’s recommendations were required to meet the truth-in-sentencing standards of the Violent Crime Control and Law Enforcement Act for certain enumerated felonies (listed in section 11212, subsection (h) of the Revitalization Act and D.C. Code § 24-112(h)), mandating that an offender convicted of one of these felonies had to serve no less than eighty-five percent of a determinate prison term. Thus, for all “subsection (h)” felonies, the sentencing system was converted 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 a single prison term imposed, followed by a period of Supervised Release.

For all felonies, the TIS Commission had to ensure that: (1) the sentence would reflect the seriousness of the offense and the criminal history of the offender as well as provide for just punishment and deterrence and necessary educational and vocational training, medical care, and other correctional treatment for offenders; (2) good time credit would be calculated pursuant to section 3624 of Title 18 of the United States Code; and (3) an “adequate period of supervision” would follow release from imprisonment. The TIS Commission issued its formal recommendations to the Council for the District of Columbia on February 1, 1998. Limiting its conclusions to those that were required to comply with the Revitalization Act, the TIS Commission left to the Council’s authority the development of any broader changes to sentencing policy in the District of Columbia. The recommendations proposed by the TIS Commission were ultimately adopted by the Council as the Truth in Sentencing Amendment Act of 1998, effective October 10, 1998. (D.C. Law 12-165; D.C. Code § 24-403.01).

The TIS Commission submitted an additional Comments and Suggestions Report, which presented outstanding issues for the Council's consideration. Included among these supplemental recommendations was the creation of an entity to advise and assist the Council in the development of sentencing policy. In response to the TIS Commission's recommendations, the Council created the District of Columbia Advisory Commission on Sentencing (the "Commission"). (Advisory Commission on Sentencing Establishment Act of 1998, D.C. Law 12-167, 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 factors appropriate 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 in preparation for submissions to the Council and pursuant to its mandate. This resulted in the 1999 publication of *Criminal Sentencing Practices in the District of Columbia 1993-1998*. In response to the specific directives from the Council, on April 5, 2000, the Commission issued *Sentence Recommendations to the Council of the District of Columbia*. The report included several important recommendations, the most prominent being the evolution from indeterminate to determinate sentencing for all felony offenses and the abolition of parole, substituting Supervised Release following incarceration. The 2000 report also suggested that the District consider adopting some form of structured sentencing as a way to promote fairness under the new determinate sentencing system. The Council adopted these recommendations in the Sentencing Reform Amendment Act of 2000 (D.C. Law 13-302; D.C. Code § 24-403.01). This legislation gave the Commission the additional responsibilities of surveying structured sentencing systems around 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 to continue reporting on the implementation of determinate sentencing in the District.

In 2003, the Commission recommended the adoption of voluntary sentencing guidelines for the District of Columbia. The following year, the Council recognized the voluntary guidelines, enacting the Advisory Commission on Sentencing Structured Sentencing System Pilot Program Amendment Act of 2004, and directed the Commission to assist the Superior Court with implementation of the guidelines as a pilot program. (D.C. Law 15-190). In addition, this legislation made the Commission a permanent agency, renaming it the District of Columbia Sentencing Commission. The District of Columbia Superior Court began imposing sentences under the Voluntary Sentencing Guidelines for all felony pleas and verdicts on and after June 14, 2004.

### C. Revision to the Criminal Code and Continued Monitoring of Voluntary Sentencing Guidelines (2004-2006)

As the Commission continued to monitor the implementation of the sentencing guidelines, the Council turned its attention to the District of Columbia Criminal Code. The Council expressed concern about confusing and outdated language and overlapping provisions in the Code that were potentially affecting fairness in sentencing practices. After research and input from the public, in 2006 the Council directed the Commission to examine the criminal code and make recommendations to provide for a uniform and coherent body of law. (Advisory Commission on Sentencing Act of 2006, D.C. Law 16-126; D.C. Code § 3-101, et seq.). The resulting Advisory Commission on Sentencing Act of 2006 also expanded the membership of the Commission and again changed its name to the District of Columbia Sentencing and Criminal Code Revision Commission. The Act directed the Commission to examine the District's criminal statutes to ensure clear and consistent language, organize existing statutes in a logical order, address proportionality of fines and penalties, propose a classification system for misdemeanor statutes, and propose amendments necessary to facilitate the equitable administration of the criminal laws in the District of Columbia. In January of this year, the Commission submitted the Fine Proportionality Act of 2011 to the Council and the Mayor. This draft legislation proposes to standardize criminal fines for all felonies and most misdemeanors in the District.

\* \* \*

The Commission continues to actively pursue its mandate to promote fair and consistent sentencing policies. Since its inception, many important reforms have been accomplished, including the development of the District's current sentencing structure, which has consistently yielded high compliance rates and allowed the Commission to make recommendations based on actual sentencing research. 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 two primary statutory responsibilities: monitoring the Voluntary Sentencing Guidelines and developing recommendations for criminal code revision. The former involves collecting data from the Superior Court and the Court Services and Offender Supervision Agency (CSOSA) in order to assess compliance with the Guidelines, identify problem areas, and monitor trends in sentencing. This includes monitoring sentencing practices in general and providing reports to the Council and the Mayor on the state of sentencing practices for the District of Columbia. It also requires incorporating each new crime or sentencing provision enacted by the Council into the District's Guidelines structure. Concurrently, the Commission is proceeding with its mandate to examine the criminal code in order to provide recommendations on revisions that will correct inconsistencies, achieve further proportionality in imprisonment terms and fines, and create clarity and coherence in criminal statutes.

### **III. Commission Membership**

The Commission is made up of twenty members, fifteen voting members and five non-voting members. Its membership includes representation from various criminal justice agencies, the judiciary, academic institutions, practicing attorneys and the general public.<sup>1</sup> This diverse membership guarantees a variety of perspectives when developing sentencing policy recommendations for the Council.

By statute, 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 D.C. Public Defender Service 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 who are not attorneys, 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 within its purview.

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<sup>1</sup> The legislation governing the D.C. Sentencing and Criminal Code Revision Commission can be found at D.C. Code § 3-101, et seq.

#### **IV. Commission Meetings**

The Commission meets several times a year to monitor sentencing data under the Guidelines, make modifications to the Guidelines or adjust rankings for any new offenses enacted by the legislature, and evaluate developments in sentencing policy in the District. Meetings are open to the public and interested parties are encouraged to attend through notification in the D.C. Register and on the Commission's website.

In 2010, the full Commission met on the following dates:

January 26, 2010	June 22, 2010
February 23, 2010	September 21, 2010
March 30, 2010	October 19, 2010
April 27, 2010	

In between meetings of the full Commission, several working committees met regularly to formulate recommendations for action by the full Commission. The minutes of the full Commission's public meetings are available online at the Commission's website located at <http://sentencing.dc.gov>. Meetings are held on the third Tuesday of each month<sup>2</sup> and convene at One Judiciary Square, 441 4<sup>th</sup> Street, NW, Washington, DC 20001.

#### **V. Staffing Developments**

To assist with the various components of the Commission's responsibilities, the staff in past years has consisted of an executive director, research analyst, policy analyst, staff attorney and staff assistant. When the Council expanded the Commission's mandate to address code reform, an attorney advisor was added to lead that project.

With the appointment of a new executive director in 2009, the Commission has reorganized and enhanced the structure of the staff. First, the policy analyst position, used to assist the research analyst, was converted to a data management specialist, whose duties are to oversee the procedures, collection and organization of all data received by the Commission for processing. Modifying this position complements the Commission's efforts to achieve optimal data quality and modernize its data systems. Additionally, a paralegal position was created to assist on the extensive work associated with the Criminal Code Revision Project. These changes serve to streamline the duties of the staff so as to more efficiently achieve the Commission's goals to provide data collection and analysis, criminal code revision, and Guidelines monitoring.

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<sup>2</sup> Scheduled meeting dates, times and places are subject to change without notice. However, the Commission makes every effort to immediately notify the public of any changes in the schedule.

## **VI. Website Changes**

In a continuing effort to increase public access to the most recent information on the D.C. Voluntary Sentencing Guidelines, the Commission has extensively reorganized and updated its website located at <http://sentencing.dc.gov>. Nearly every page on the site was revised, including the following notable features.

### **A. Commission History and Timeline**

The website now displays a comprehensive history of the Commission and the Voluntary Sentencing Guidelines in the District. This section provides historical information, including both a timeline summarizing significant events and also a longer narrative that details the development of the District's sentencing policy over the past decade. This information contains links to historical documents and summaries for those wanting reference materials on the Commission's work product. The public now has access to important reports, legislation and other resource materials that follow the development of sentencing guidelines in the District.

### **B. Commission Meeting Information**

In addition to minutes from previous years, the website now also provides notification of meeting logistics and meeting agendas, which are updated each month. Because the Commission's meetings are public, this feature gives notice of the issues that are before the Commission for each meeting and documentation of the discussion pertaining to Commission business.

### **C. Publications**

This section has been updated to include past and current sentencing reports published by the Commission and previous versions of the Voluntary Sentencing Guidelines Manual. This section also includes the new collection of quarterly Issues Papers, which offer brief discussions on various topics related to sentencing policy. Recent Issues Papers analyze sentences imposed for felony drug offenses and examine criminal fines in the District.

### **D. Training**

Part of the Commission's mandate is to provide training and information to the courts, practitioners, and the public on sentencing guidelines in the District. A new section of the website features information on how to request training from the Commission and training materials available for users requiring an overview of the Guidelines.

#### E. General updates

The website now contains the most recent information on Commission members, staff, meeting minutes, contact information and helpful links.

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Part of increasing public understanding of sentencing guidelines is committing to a strong web presence and these changes are geared towards this goal. Future content of the website will focus on enhancing resources that provide educational materials on sentencing policy in the District.

## CHAPTER TWO

### DATA TRANSFER AND COLLECTION PRACTICES

#### I. Sentencing Data

In previous reports, the Commission obtained felony sentencing data from the District of Columbia Superior Court (DCSC), by viewing and querying data maintained in the Court's Integrated Justice Information System (IJIS). This process was time intensive, since individual felony counts and cases had to first be queried before sentencing information could be retrieved and analyzed. However, the process by which the Commission obtained sentencing data changed significantly in 2010.

Shortly after the adoption of the District's Voluntary Sentencing Guidelines in 2006, the Commission began exploring a process to more efficiently transfer sentencing data from the Superior Court to the agency's database for legislatively mandated analysis and monitoring purposes. The agency contracted with Cross Current Corporation to develop the Sentencing Guidelines Application (SGS) to streamline and automate the data collection process. The SGS is implemented as a web-based application, through which the Commission captures information on sentences imposed, calculates guidelines recommended sentences, and electronically receives additional data from the Court. The SGS is an independent, internet technology-based system and access to the application is provided through the secure, government DC JUSTIS network.

In addition to the web application, the SGS has a web service based component that was developed to extract information from DCSC's Courtview system for use in the SGS environment via the JUSTIS database. Two triggers have been created in the JUSTIS database to direct data to the SGS web service when: (1) a conviction or plea is entered and (2) a sentence is imposed. This feature of the SGS provides a continuous, electronic flow of sentencing data from the DCSC to the Commission that is both timely and comprehensive.

The initial interface was designed to process new cases opened in the Courtview system. However, the Commission determined that historical offense and sentencing information in Courtview would enhance the SGS functionality and permit greater research capabilities. This led to the creation of a new trigger added to the JUSTIS database to allow for a one-time transfer of all relevant, sentenced felony cases within a specified date range available in the Courtview system. The SGS web service was modified to receive this one-time transfer and place the historical data in the SGS database in a compatible format. This modification provided comprehensive felony sentencing information beginning January 16, 2006, and transferred the data necessary to undertake an evaluation of the effectiveness of the District's Voluntary Guidelines since their inception.

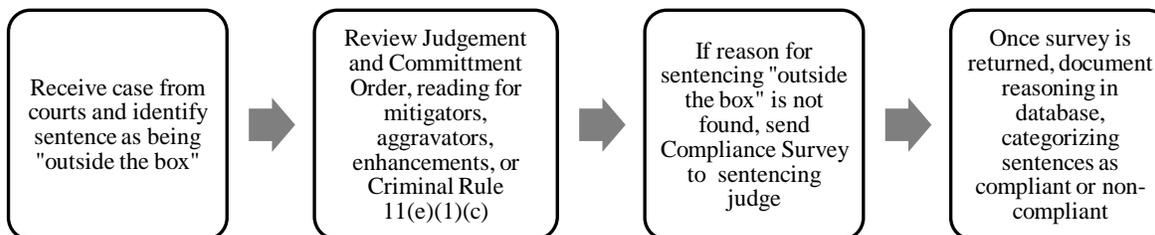
Throughout the development and testing of the SGS, the Commission encountered a number of technological challenges, including changes to the Court's data system, connectivity problems and data transfer issues. Each of these matters presented a unique set of problems that required attention before the application could be fully functional. The Commission successfully coordinated efforts with the Court and the Criminal Justice Coordinating Council through multiple rounds of testing to resolve the data transfer issues.

After years of navigating numerous challenges and obstacles, the Commission is proud to report that the SGS web application finally became fully operational this year, providing real-time felony sentencing data for reference and analysis. A historic data transfer of approximately 15,000 sentences imposed between 2006 and 2010 was completed, at which time a daily feed was implemented to transfer verdicts, pleas and sentences imposed each day. The combination of the historic data transfer and the daily feeds has provided the data necessary for the development of a comprehensive agency sentencing database on which to conduct analysis, compliance review and related sentencing research.

The Commission continues to work with the Court Services and Offender Supervision Agency (CSOSA) to explore various approaches to automate the transfer of criminal history data used to calculate the recommended Guidelines sentence. At present, the Commission still receives the data through forms completed by CSOSA officers and then manually enters the data into the agency database. However, the two agencies are working collaboratively to implement an interim process to transfer data in a more efficient manner until a fully automated process is implemented.

## II. Non-Compliance Protocol

In an effort to improve the quality and comprehensiveness of its data, the Commission has developed a new set of protocols for handling cases with sentences that fall outside the recommended guidelines range and thus may not be compliant with the Guidelines. The protocols have been used since November 2010, and have retroactively been applied to all “outside the box” sentences from 2010. The new process for handling the individual counts where the imposed sentence appears to be non-compliant is as follows:



This process integrates the data the Commission receives from the Superior Court and the Court Services and Offender Supervision Agency (CSOSA), with qualitative information from the judges and their staff. The previous process involved a lengthy document that required judges to input several types of information, often about cases that had been sentenced many months earlier. This new streamlined process of sending enhanced “Compliance Surveys”—now multiple choice documents disseminated via email—has improved the response time and frequency from the D.C. Superior Court judges as well as the comprehensiveness of the Commission’s data.

Compared to prior years, a significant increase in compliance rates was found in 2010 after these protocols were implemented. This shift is largely due to the increased follow-up with regard to apparently non-compliant sentences, and also improved consistency and timeliness in issuing Compliance Surveys to judges. In previous years, many sentences that were or appeared to be “outside the box” were labeled as “non-compliant” if an explanation was not sought or received. A review of 2010 sentences through the new protocol revealed that the majority of sentences initially labeled as “non-compliant” are actually compliant due to valid, Guidelines-governed departures for mitigating/aggravating circumstances, enhancements, or Criminal Rule 11(e)(1)(c) dispositions (sentences dictated by a plea agreement).<sup>3</sup> The number of sentences that were actually compliant departures suggests that compliance rates reported in years past were probably understated. Updating and streamlining its protocols are an important part of the Commission’s ongoing efforts to continue improving data quality and analysis. These

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<sup>3</sup> The Commission considers a sentence to be compliant with the Guidelines if it departs from the recommended sentence for reasons that are built into the system, including a non-exclusive list of mitigating and aggravating factors or unusual plea agreements in which the judge agrees to be bound by the sentence terms. Obviously, if all departures, including these “authorized” departures were considered non-compliant, the resulting compliance rate would be lower.

improvements to the oversight of sentencing data collection will allow even more comprehensive reporting on Guidelines compliance in future years.

### **III. Criminal History Form**

The Commission is currently transitioning to a more accurate system of collecting criminal history data through the use of a new Sentencing Guidelines Form (SGF). An SGF is prepared by the Court Services and Offender Supervision Agency (CSOSA) for each count of conviction in a felony case where a presentence report is prepared. The form captures demographic and criminal history information about a defendant that is used in calculating the appropriate sentence.

The existing form is a basic Microsoft Word document. CSOSA officers manually enter data into the appropriate blanks on the form, with no standardization of data elements inputted. Opportunities for data quality control are limited, consisting of only supervisory review prior to submission of the forms externally. Once completed, the SGF is forwarded to the Commission, where the data contained in each form is manually entered into the Commission's database. This additional manual transfer of data has the potential to impact data quality as well.

In order to address some of the deficiencies of the current procedure to obtain criminal history information, a new Sentencing Guidelines Form was developed focusing on the following goals:

- To make the process of completing the forms more efficient
- To implement an automated process to calculate, validate, and correct certain data fields
- To incorporate mathematical computations automated in the form
- To improve the quality of data by eliminating the need for manual data entry

These goals were the driving factors behind the creation of the new Sentencing Guidelines Form. The Commission has worked closely with CSOSA to develop the most effective means for addressing these concerns and is pleased to report the following solution.

As previously mentioned, the existing SGF is a Microsoft Word document. The new SGF was created using Microsoft InfoPath, which is software specifically designed for the creation of intelligent forms, from which data can be efficiently collected. The InfoPath SGF incorporates an automated process to calculate, validate, and correct certain data fields, representing an important upgrade to the previous form. The validation and correction functionality of the form ensures that critical data are entered in a uniform manner and that common data entry errors are avoided. For example, if a user enters "2010CF3123" for the case number, the form will convert the number to a standardized format as "2010CF3000123." If the user enters the same date in the birth date and the offense date sections, a warning message appears and the form cannot be submitted until the problem is corrected. The new form also automatically performs the mathematical calculations necessary to determine an offender's criminal history score. It, thus, eliminates the chance for simple, human mathematical errors that are often found in the current

process. The InfoPath SGF has the capacity to automatically fix some data entry errors and to flag others so that the user can correct them prior to the form's submission.

The InfoPath form also improves the Commission's utilization of the criminal history data contained within the forms. With the existing form, Commission staff must manually re-enter the data from each form into its database, a process that is both time-consuming and has the potential to create data validity problems. Each InfoPath form can be automatically converted into an Excel spreadsheet and the data imported into the Commission's database. Incorporating the InfoPath form into the agency's data collecting process will result in a more efficient use of resources and improved data quality.

The InfoPath Sentencing Guideline Form is the first step in streamlining and automating the criminal history data collection process. The new form, while more efficient and accurate than the existing form, is actually meant to serve as an interim solution until the Commission is able to receive automated data directly from CSOSA. The Commission's ultimate goal is to implement a direct electronic criminal history data transfer system from CSOSA that mirrors the data transfer the Commission currently has with the District of Columbia Superior Court. Once this goal is achieved, the Commission will be able to fully utilize the Sentencing Guidelines Web application, which will then have the capacity to calculate the recommended Guideline sentence for each defendant.

## CHAPTER THREE

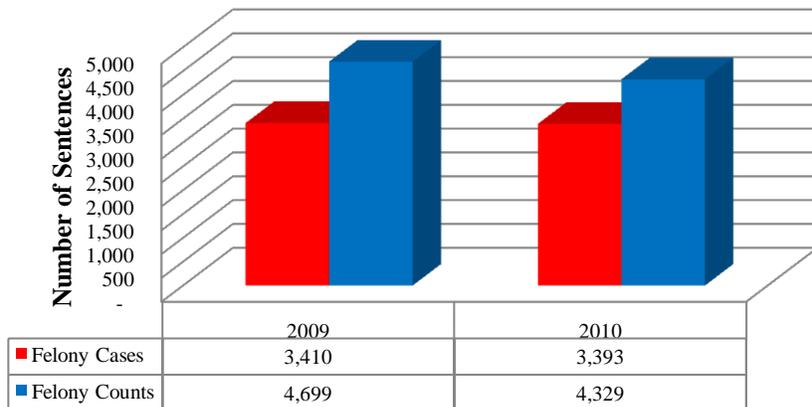
### DATA ANALYSIS

#### I. Data Sources

The data utilized in this report include all felony sentences imposed in the District of Columbia between January 1 and December 31, 2010, regardless of when the initial conviction occurred. The data were gathered primarily through the new SGS web application, which collects offender, offense, and sentencing data, and were supplemented with felony offenders’ criminal history information from the Court Services and Offender Supervision Agency (CSOSA). The Superior Court, through the Courtview web application, offered additional offense and sentencing information, including specific Guidelines-governed departure reasons.

In 2010, the D.C. Sentencing and Criminal Code Revision Commission received sentencing information for 3,393 felony cases, with a total of 4,329 felony counts, committed by 3,021 individual offenders.<sup>4</sup> There are more counts than cases, as an offender can be charged with numerous counts within a single case, each one charging a separate offense. Thus, a single case can be compliant<sup>5</sup> with the Guidelines on some counts while non-compliant on others; given that possibility, a *count* is the primary unit of analysis in this report. As the District’s Voluntary Sentencing Guidelines apply solely to felony offenses, this report includes analyses of both felony counts and felony cases. The number of cases and counts sentenced in 2010 are consistent with 2009 figures, showing a very slight decrease in the number of felony sentences imposed in 2010.

**Figure 1: Total Number of Felony Sentences Imposed by Year**



<sup>4</sup> Individual offenders are determined by Police Department Identification Number (PDID); Commission data showed 3,021 unique PDIDs for 2010, with PDIDs missing for 11 cases.

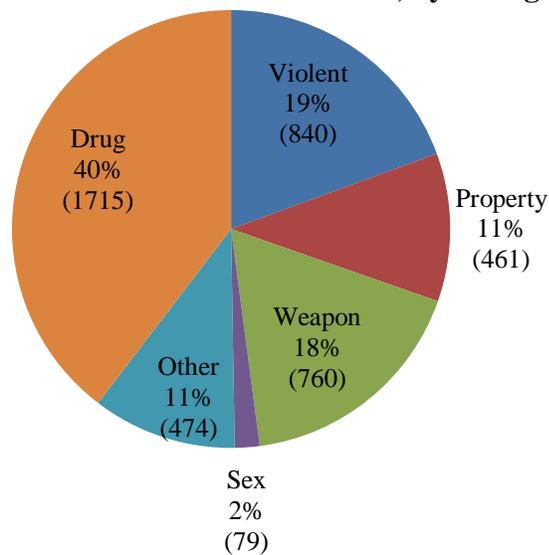
<sup>5</sup> Compliance means that the sentence imposed complied with the type of disposition and length of disposition recommended within a given grid cells of either the Master Grid or Drug Grid, including departures for reasons that are authorized in the Guidelines.

## II. Types of Offenses Sentenced

Six major offense classifications are used to categorize felony offenses sentenced in 2010. These categories, and some of the more common offenses within them, are:

- 1) Sex offenses, which include all degrees of sex abuse and of child sex abuse;
- 2) Violent offenses, which include armed and unarmed first degree murder, second degree murder, armed and unarmed robbery, assault with a deadly weapon, and aggravated assault;
- 3) Weapon offenses, which are comprised predominantly of carrying a pistol without a license, felon in possession of a firearm, and possession of a firearm during a crime of violence;<sup>6</sup>
- 4) Drug offenses, which are distribution or possession with intent to distribute a controlled substance and attempted distribution or attempted possession with intent to distribute a controlled substance;
- 5) Property offenses, which include arson, first degree burglary, second degree burglary, first degree theft, receiving stolen property, and unauthorized use of a vehicle; and
- 6) Other offenses, which consist largely of escape, fleeing law enforcement, obstruction of justice, and Bail Reform Act violations.

**Figure 2: Types of Offenses Sentenced in 2010, by Charge Category**

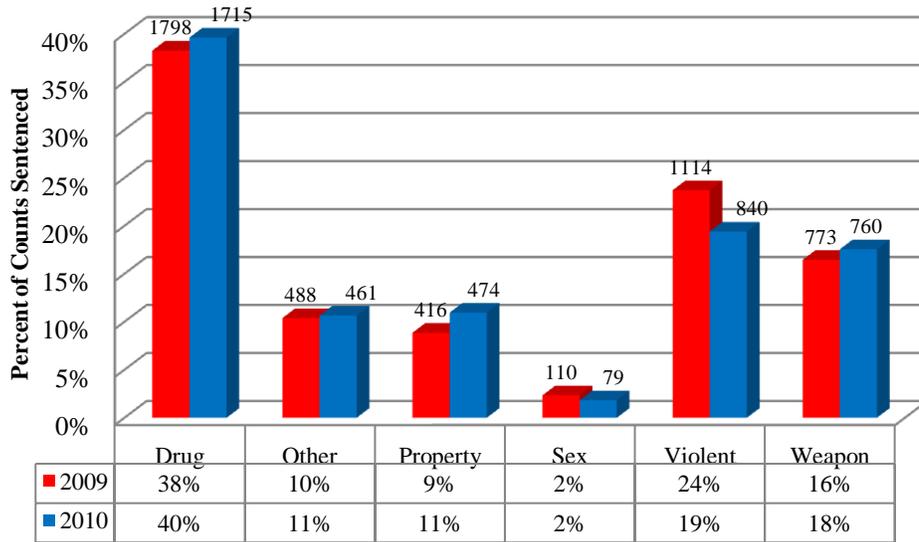


The distribution of types of felony offenses sentenced in 2010 was consistent with 2009, as drug offenses were the most common and sex offenses the least. Figure 3 shows that there were slight increases in the percent of offenses sentenced that were drug, property and weapon offenses, while there was a 5% decrease in the percent of sentences imposed for violent crimes.

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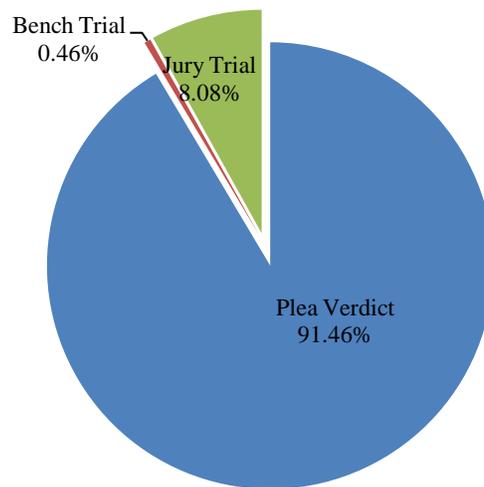
<sup>6</sup> Possession of a firearm during a crime of violence (PFCOV) could also be categorized as a violent offense. There were 130 PFCOVs sentenced in 2010; if they were counted as violent offenses rather than weapon offenses, then violent crimes would rise to 22% of felonies sentenced, and weapon offenses would fall to 15%.

**Figure 3: Types of Offenses Sentenced in 2009 and 2010, by Count**



As has been true consistently in prior years, the overwhelming majority of felony cases were disposed of through guilty pleas in 2010 (Figure 4). Jury and bench trials were far less common, with bench trials accounting for less than 1% of cases. There was no clear trend among the cases disposed of through bench trials, as they included all six types of offenses, and had wide ranges of offense severity groups and criminal history scores.<sup>7</sup>

**Figure 4: Types of Dispositions in 2010, by Case (N = 3,393)**



<sup>7</sup> An offender's criminal history score is calculated by adding all of the points accumulated from prior adult convictions and prior juvenile adjudications that are not decayed under the criminal history scoring rules. Points are weighted based on the seriousness of the offense, as ranked by the Sentencing Guidelines. The total score then places the offender in one of five categories along the horizontal axis of the Guidelines grid, ranging from Category A, representing offenders with no or minimal criminal history, to Category E, representing those with six or more criminal history points. The categories are: A (0 to .50 points); B (.75 to 1.75); C (2 to 3.75); D (4 to 5.75); E (6+).

Approximately 20% of felony counts sentenced in 2010 involved offenders with a criminal history score of zero, while less than 5% of counts had offenders with the maximum criminal history score of “6+” points. The most common criminal history group for individuals sentenced on the felony Drug Grid was Criminal History Category C (2.0 to 3.75 points), which included 32.3% of drug counts sentenced. The modal range on the Master Grid was Category A (0.0 to 0.5 points), representing 34.8% of the counts.<sup>8</sup> The higher criminal history score for drug offenders may be attributable to the large number of offenders with long histories of substance abuse.

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<sup>8</sup> See pages 33 and 35 for the full distribution of criminal history scores and offense severity groups on the Drug Grid and Master Grid for 2010.

### III. 2010 Felony Sentencing Demographics: Gender, Race, and Age of Offenders

#### A. Gender of Offenders

Consistent with prior years, the majority (85.5%) of felony offenders sentenced in 2010 were males. One noticeable difference is that 2010 data included 33 offenders whose gender was listed as “Other/Unknown,” whereas 2009 data did not include any offenders in this category. It is unclear if this current development is the result of missing or erroneous data, a true increase in the number of individuals not identified as either male or female, or a combination of the two scenarios.

**Figure 5: Gender of Offenders in 2009 and 2010**

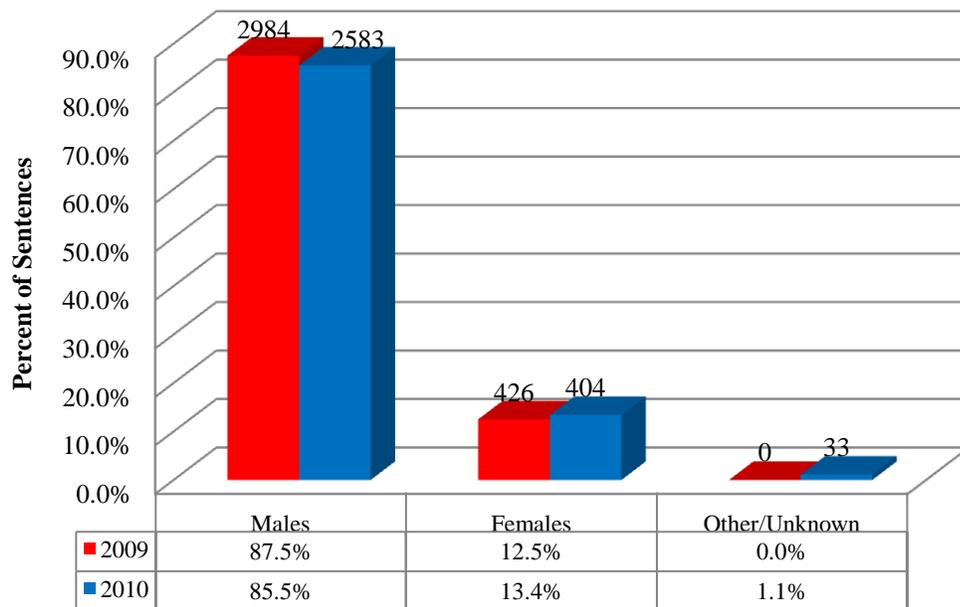
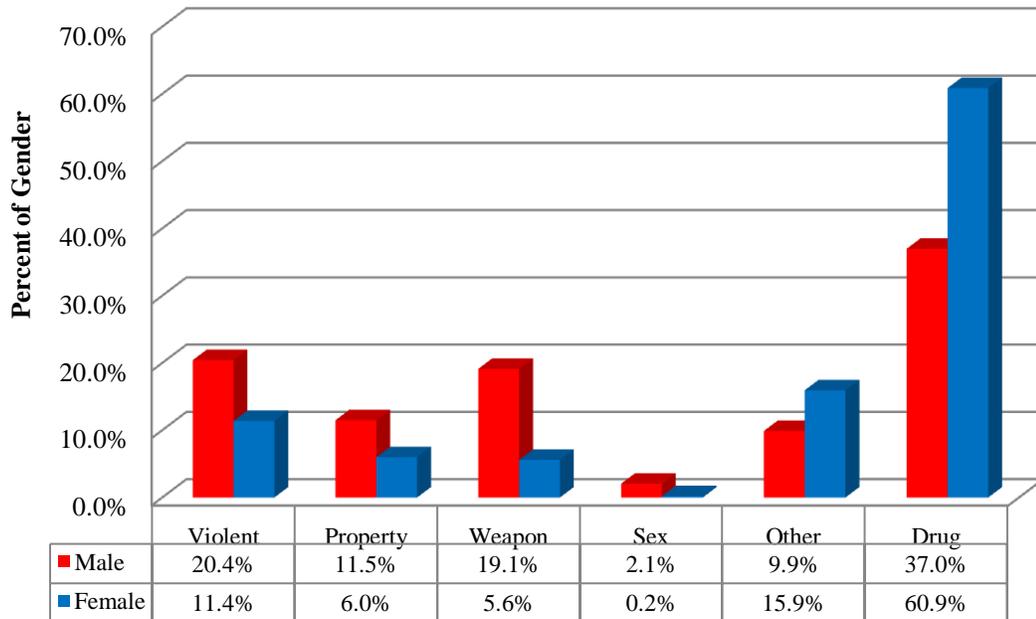


Figure 6 (page 20) illustrates that female offenders were disproportionately sentenced for drug offenses in 2010, with nearly two-thirds of sentences falling into that category; notably, only 6% of female offenders were sentenced for property crimes, and 5.6% for weapon offenses. Male sentences were more evenly distributed across the offense types, relative to female offenders, with numbers closely resembling those for all offenders (Figure 2). This is to be expected, since such a large proportion of offenders sentenced in 2010 were male.

**Figure 6: Offense Types Sentenced, by Gender<sup>9</sup>**

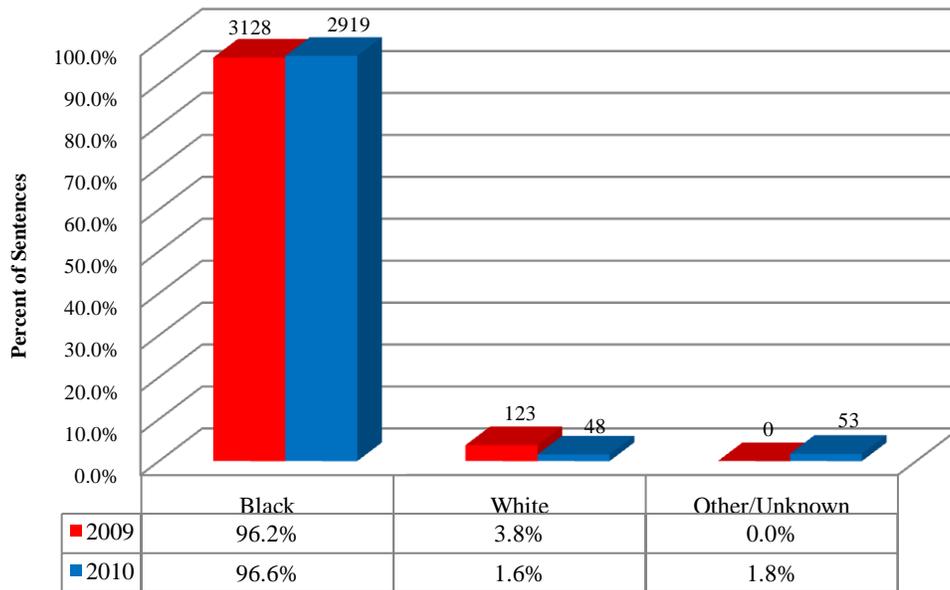


#### B. Race of Offenders

When analyzed by racial classification, the percentage of offenders by race remained relatively stable over the past two years, with Black offenders representing 96.2% of offenders in 2009 and 96.6% in 2010 (Figure 7, page 21). It does appear that White offenders have decreased in both number and proportion, declining from 123 (3.8%) in 2009, to 33 (1.6%) in 2010. However this difference is partially due to the omission of an “Other/Unknown” category in 2009. Additionally, differences in the capture of “race” and “ethnicity” information contribute to inconsistencies in data collection. This is particularly true for Hispanic offenders who may be classified as Black, White or “Other” in the data; the variable “race” is separate from “ethnicity” in the data and does not classify “Hispanic” as a unique group. Although the Sentencing Guidelines Form contains a field for ethnicity, it is rarely completed, therefore preventing the collection of reliable information with regard to Hispanic offenders in the District of Columbia. Thus, it is unclear whether an increase in proportion of Black offenders and a decrease in the percentage of White offenders is due to a true shift in racial composition of offenders sentenced, or shifts in the manner in which Hispanic offenders are being identified.

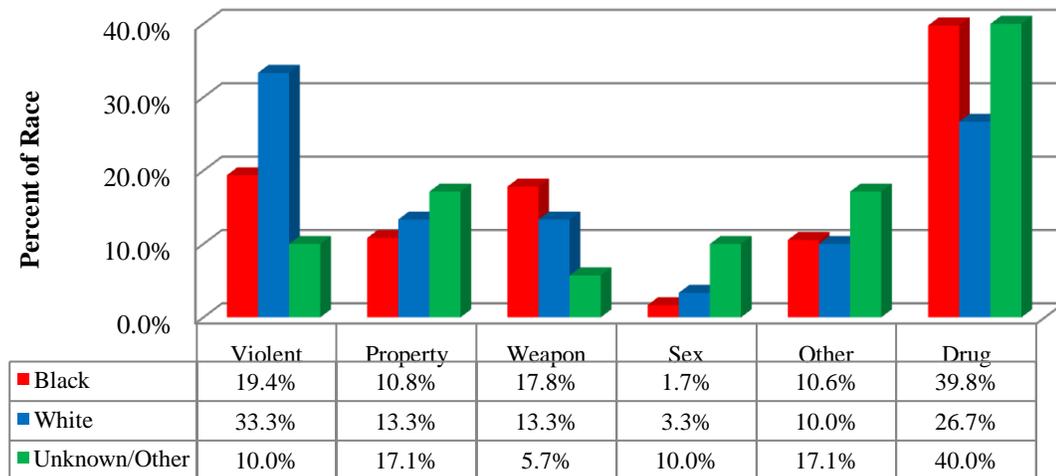
<sup>9</sup> Offenders with “Unknown/Other” gender were not included in this analysis.

**Figure 7: Race of Felony Offenders in 2009 and 2010**



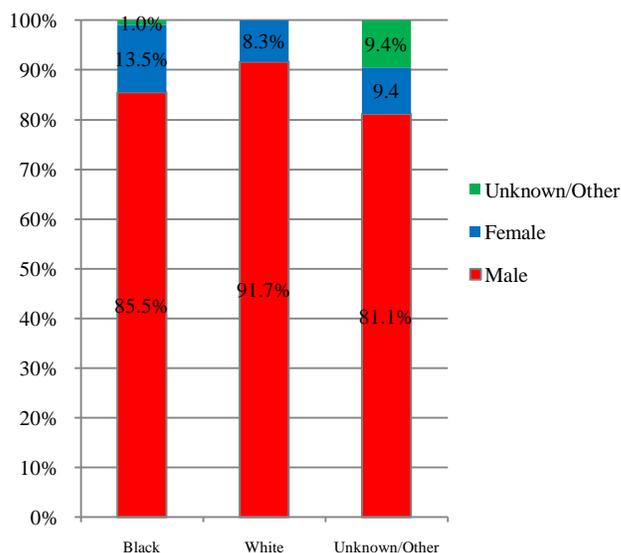
While Figure 7 only counts each offender once, Figure 8 measures offenses by count rather than offender, so an individual person may be in the data multiple times. Assessing the individual offense categories by race reveals that, similar to the overall data trends, drug offenses are the most common (40%) for offenders classified as Black and Unknown/Other race. Offenders classified as White were disproportionately more likely to be sentenced for violent crimes. Another interesting finding is that for Other/Unknown offenders, sex offenses were sentenced as often as violent crimes and more often than weapons offenses, whereas sex offenses were the least common for Black and White offenders as well as for the overall data.

**Figure 8: Percent of Offense Types Sentenced by Race**



As Black and male are the two dominant demographic groups being sentenced in the District, it follows that 85.5% of Black offenders were men, and 82.6% of *all* felony offenders sentenced in 2010 identified as Black men (Figures 9a & 9b). Black female was the next largest group, representing 13.1% of felony offenders sentenced, and 13.5% of Black offenders sentenced. Overall, felony offenses sentenced in 2010 were almost exclusively committed by male offenders; only 14.5% of offenders identified as non-male (N=437), and just 14 individuals were classified as neither black nor male.

**Figures 9a & 9b: Race and Gender Proportions of Offenders Sentenced in 2010**



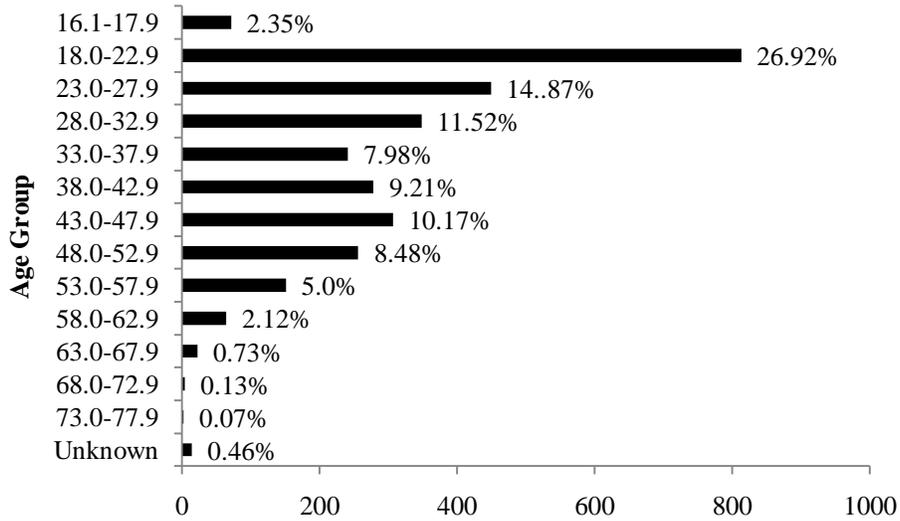
	Black	White	Unknown/Other	Total
Male	2,496	44	43	2,583
Female	395	4	5	404
Unknown/Other	28	0	5	33
Total	2,919	48	53	3,021

### C. Age of Offenders

The mean and median ages of offenders sentenced for a felony conviction in 2010 was 32.0 and 28.6, respectively. This skew in numbers can be attributed to the fact that there is a minimum cutoff of 16 years of age, but no maximum age cutoff for older offenders. This minimum cutoff in age creates a concentration of offenders at the lower end of the range. The youngest offender was 16.1 years old at time of offense<sup>10</sup> and the oldest was 76.5 years old. Date of birth information was not recorded for 17 offenders whose ages are listed in Figure 10 (page 23) as “unknown.”

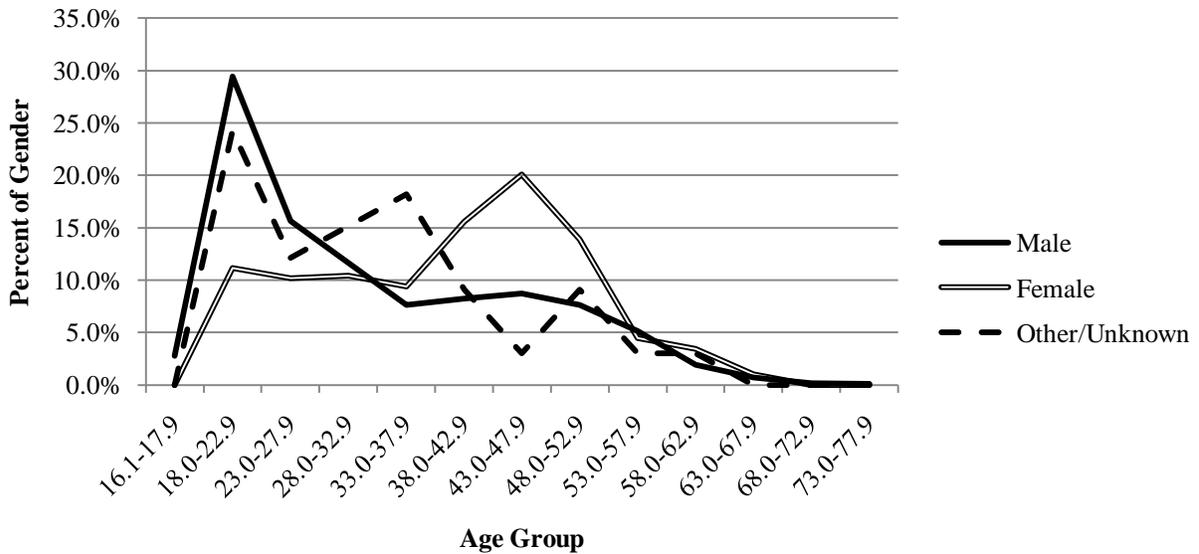
<sup>10</sup> D.C. Code § 16-2301(3) defines “child” as a person who is under 18, with the exception of an individual 16 years or older *charged* with homicide, first degree sexual abuse, first degree burglary, robbery while armed, or assault with intent to commit the foregoing.

**Figure 10: Age Distribution of Felony Offenders Sentenced in 2010**



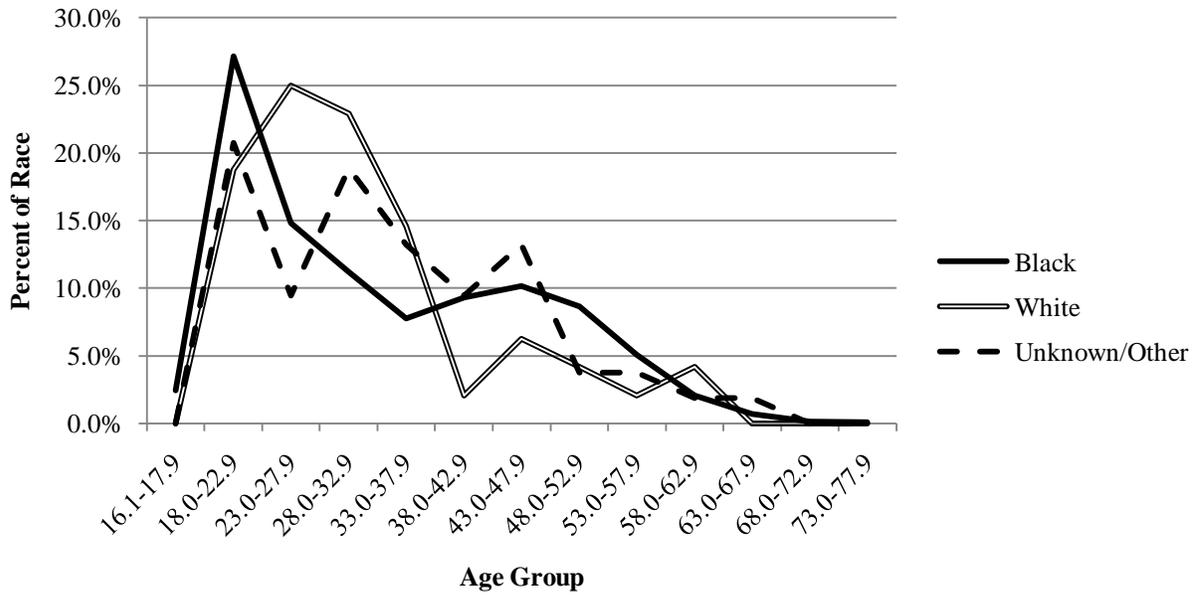
The typical age at the time of offense appears to differ markedly between male and female offenders. While over 63% of male offenders were under 33 years old at time of offense, less than one-third of female offenders fell into that age range (Figure 11). Offenders age 18 to 23 were the largest group of male offenders, whereas the largest group of female offenders was between the ages of 43 and 48. What this data suggests is that female offenders sentenced in 2010 tended to be older than male offenders

**Figure 11: Age Distribution of Felony Offenders across Gender**



The age distribution for felony offenders appears to be consistent across race. The majority of offenders sentenced in 2010 committed their crime before turning 30 years old. However, comparisons between the two racial categories should be made with caution, as the population of White felony offenders sentenced in 2010 is drastically smaller and more prone to outlier influence than their Black counterpart.

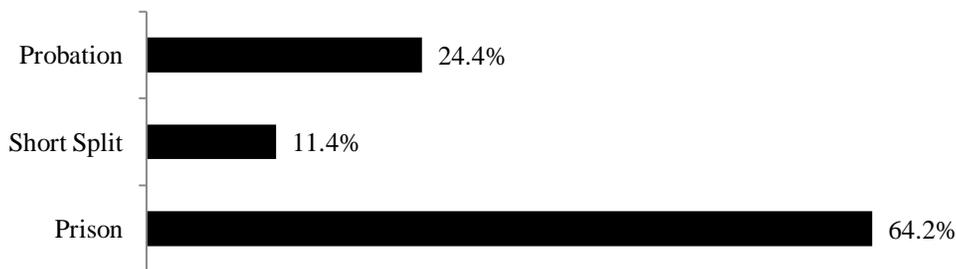
**Figure 12: Age Distribution of Felony Offenders by Race**



#### IV. Types of Sentences Imposed

Prison remains the most frequent type of sentence imposed in 2010, representing 64.2% of convicted felony counts.<sup>11</sup> Although a prison sentence is permissible in every box on the sentencing grids, the Guidelines also recognize two other types of sentencing dispositions. A compliant probation sentence is one in which the judge imposes a prison sentence within the recommended Guidelines range and suspends the execution of the entire prison sentence, releasing the offender directly to probation in a box that permits such a sentence. The other compliant disposition type in certain boxes is a short split sentence, in which the judge imposes a prison sentence that falls within the appropriate Guidelines range, but suspends the execution of some, but not all, of the prison sentence, such that the defendant initially serves no more than six months before being released to probation.<sup>12</sup> In 2010, 11.4% of convicted felony counts were sentenced to short splits, while 24.4% resulted in probation sentences.<sup>13</sup>

**Figure 13: Type of Felony Sentences Imposed in 2010, by Count<sup>14</sup>**



##### A. Type of Sentence by Offense Type

Type of sentence imposed depends largely on the severity of the offense being sentenced. Thus, it makes sense that while approximately 80% of sex and violent offenses resulted in prison sentences, only 50.8% of drug offenses resulted in prison sentences. Interestingly, 11 of the 12 offenses that resulted in ISS sentences were weapon offenses, with the other being a drug crime.

<sup>11</sup> Type of sentence imposed is influenced by the offense severity and criminal history score; the numbering frequency of each different type of sentence is broken down on the Drug and Master Grids on pages 33 and 35, respectively.

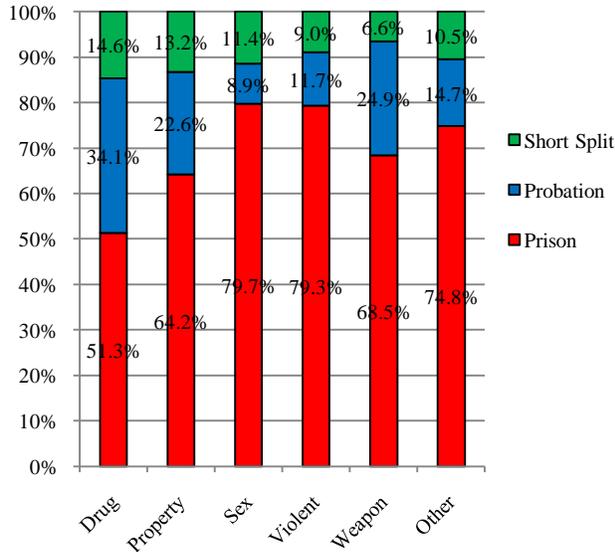
<sup>12</sup> A fourth type of sentence known as a “long split sentence” is aggregated here as a prison sentence, as the amount of time an offender must serve on a long split must be at least equal to the shortest prison term authorized in the applicable Guidelines box.

<sup>13</sup> Imposition of Sentence Suspended (ISS), in which the judge does not impose and suspend a person’s sentence but places the defendant directly on probation, is permitted under the Youth Rehabilitation Act. ISS was utilized for 12 felony counts in 2010; all offenders were below the age of 23, at the time of sentencing and are counted as a probation sentence in this analysis.

<sup>14</sup> Because “time served” represents such a small proportion of sentences imposed (N=29) they are not included in this analysis.

While drug crimes represented 55.9% of all probation sentences, the most frequent type of sentence imposed on drug offenders was prison (Figures 14a & 14b).

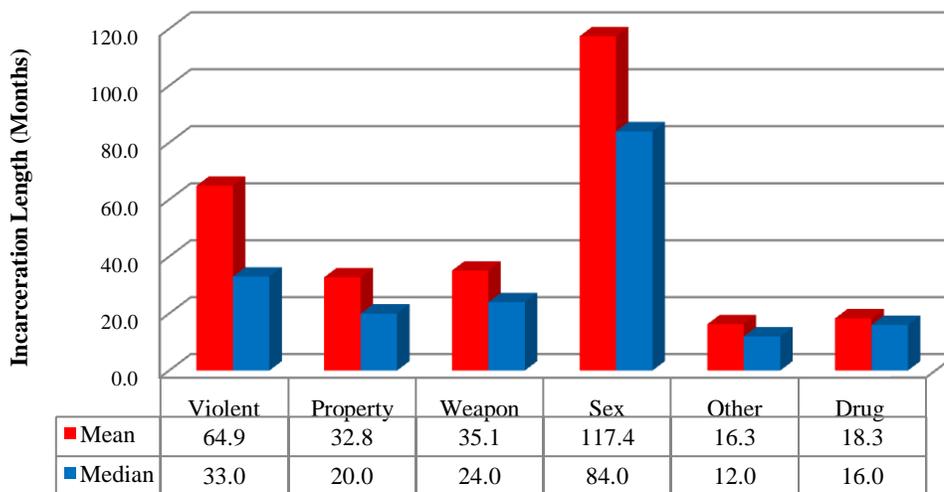
**Figures 14a & 14b: Type of Sentence Imposed for Felony Counts across Offense Types<sup>15</sup>**



	Prison	ISS	Probation	Short Split	Time Served	Total
<b>Drug</b>	872	1	579	248	15	1715
<b>Property</b>	301	0	106	62	5	474
<b>Sex</b>	63	0	7	9	0	79
<b>Violent</b>	664	0	98	75	3	840
<b>Weapon</b>	519	11	178	50	2	760
<b>Other</b>	342	0	67	48	4	461
<b>Total</b>	2759	12	1036	492	29	4329

Prison sentences imposed on sex offenses were longer on average than any other type of offense group, with the mean nearly doubling the average length for the next longest group (violent offenses). Drug and “other” offenses had the shortest mean and median incarceration lengths, both averaging fewer than 20 months in length (Figure 15).

**Figure 15: Mean and Median Length of Incarceration across Offense Types**

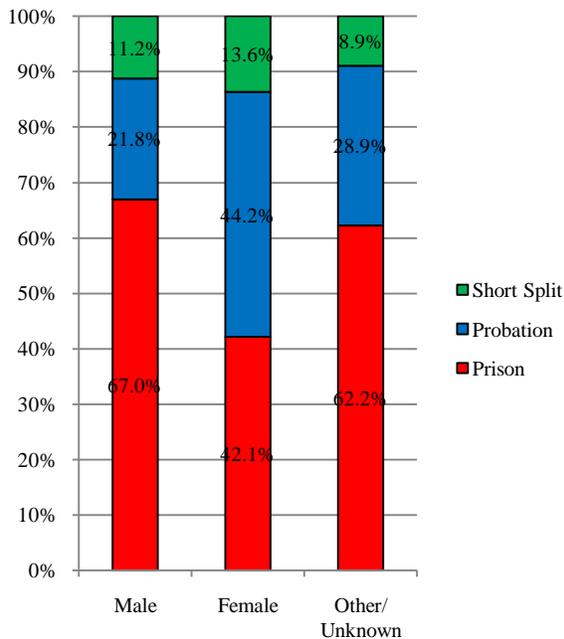


<sup>15</sup> Due to the small number of ISS and time served sentences imposed in 2010, ISS is included with probation offenses and time served is not included in Figures 14a, 16a, 17a, or 18.

## B. Type of Sentence by Gender

Analysis of sentence type by gender reveals an interesting observation: while a prison sentence was the majority of all sentences imposed (63.8%) and the majority of sentences imposed for male offenders (66.6%), the most common sentence type for female offenders was probation. Probation was imposed for 43.7% of all sentences for felony counts committed by a female offender, compared to just 21.4% of sentences for males.<sup>16</sup> One possible explanation for this discrepancy is the disproportionately high percent of female offenders sentenced for drug crimes. All 12 of the ISS sentences, which are associated with the Youth Rehabilitation Act, were male offenders. This is consistent with the previous finding, indicating that male felony offenders were younger on average than their female counterparts.

**Figures 16a & 16b: Type of Sentence Imposed for Felony Counts across Gender**



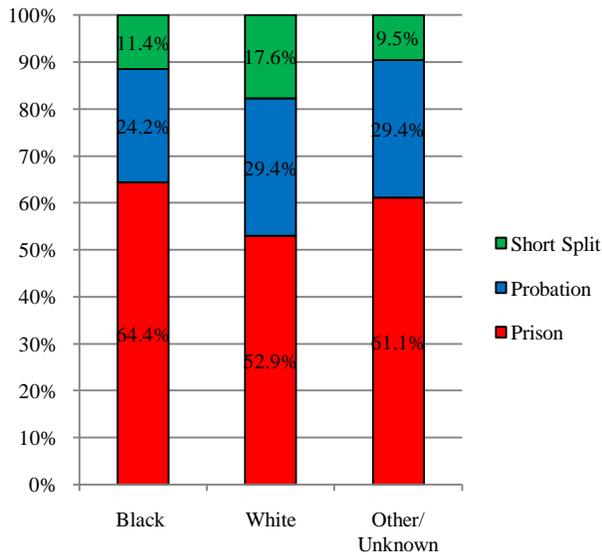
	Prison	ISS	Probation	Short Split	Time Served	Total
<b>Male</b>	2531	12	812	423	22	3800
<b>Female</b>	201	0	211	65	6	483
<b>Other/Unknown</b>	28	0	13	4	1	46
<b>Total</b>	2760	12	1036	492	29	4329

<sup>16</sup> A Chi Square Test for Independence of males and females across the three primary sentence types (prison, short split, and probation), revealed that there is a statistically significant, but weak, relationship between gender and type of sentence imposed for felony counts (a  $\chi^2$  value of 133.71 ( $p < 0.0001$ ) and Cramer's V of 0.1775). While this statistic does not take into consideration other variables such as the criminal history score, offense severity, or age—all of which could potentially explain the discrepancy between sexes—the finding does suggest that the differences in sentencing practices across gender are not entirely random.

### C. Type of Sentence by Race

Unlike with the analysis of gender, prison is the most common type of sentence imposed across all three race categories. Proportionally, Black offenders have the highest rate of prison sentences (64.0%) when compared to “within group percentages” for White offenders (55.0%) and Other/Unknown (57.1%).<sup>17</sup> As previously stated, comparisons across racial groups should be made with extreme caution, given the large differences in sample sizes, particularly between Black and White offenders.

**Figures 17a & 17b: Type of Sentence Imposed for Felony Counts across Race**



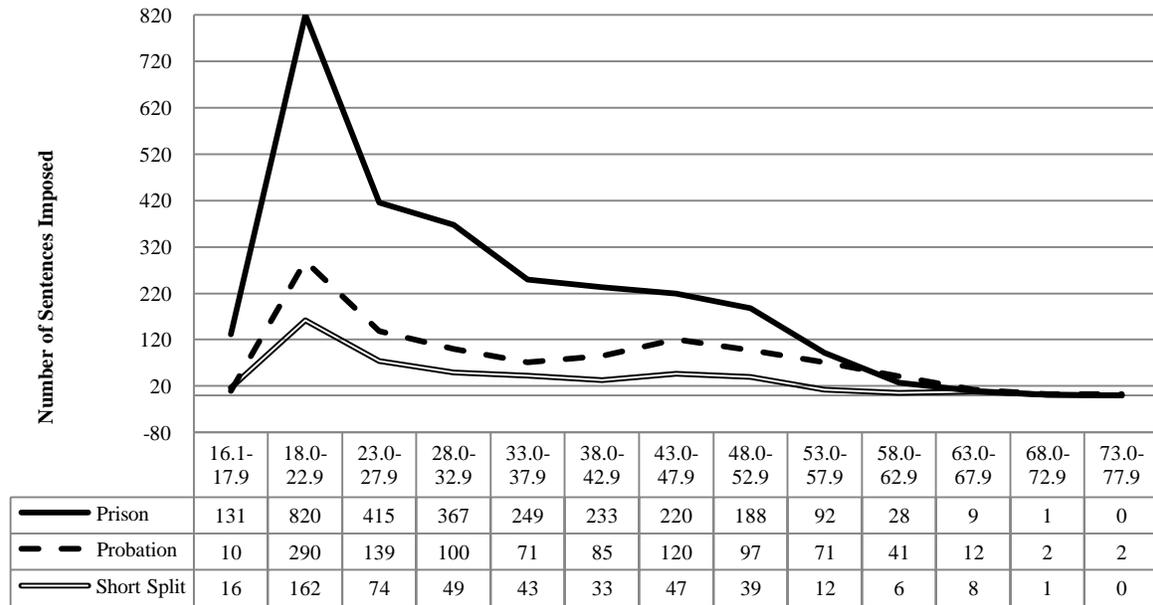
	Prison	ISS	Probation	Short Split	Time Served	Total
<b>Black</b>	2687	12	996	480	24	4199
<b>White</b>	33	0	20	6	1	60
<b>Other/Unknown</b>	40	0	20	6	4	70
<b>Total</b>	2760	12	1036	492	29	4329

### D. Type of Sentence by Age

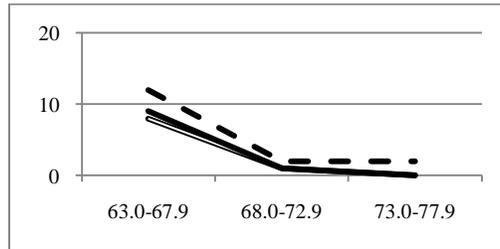
As previously noted and depicted in Figures 13 through 17, prison sentences were imposed for the majority (63.8%) of felony counts. Thus, it is not surprising that prison is the most common type of sentence across nearly all age groups. However, in the case of older offenders, specifically ages 58.0 through 77.9, probation sentences outnumber prison sentences, although the total number of counts in this age range is quite small.

<sup>17</sup>A Chi Square Test for Independence investigating the three racial categories and the three primary sentence groups indicated that there is not a statistically significant relationship between the variables ( $\chi^2=4.69$ ,  $p=0.3206$ ). Thus, type of sentence does not appear to be statistically dependent on the race of the offender, meaning the differences in types of sentences an offender receives is not governed by the race of the offender.

**Figure 18: Type of Sentence by Age Group**

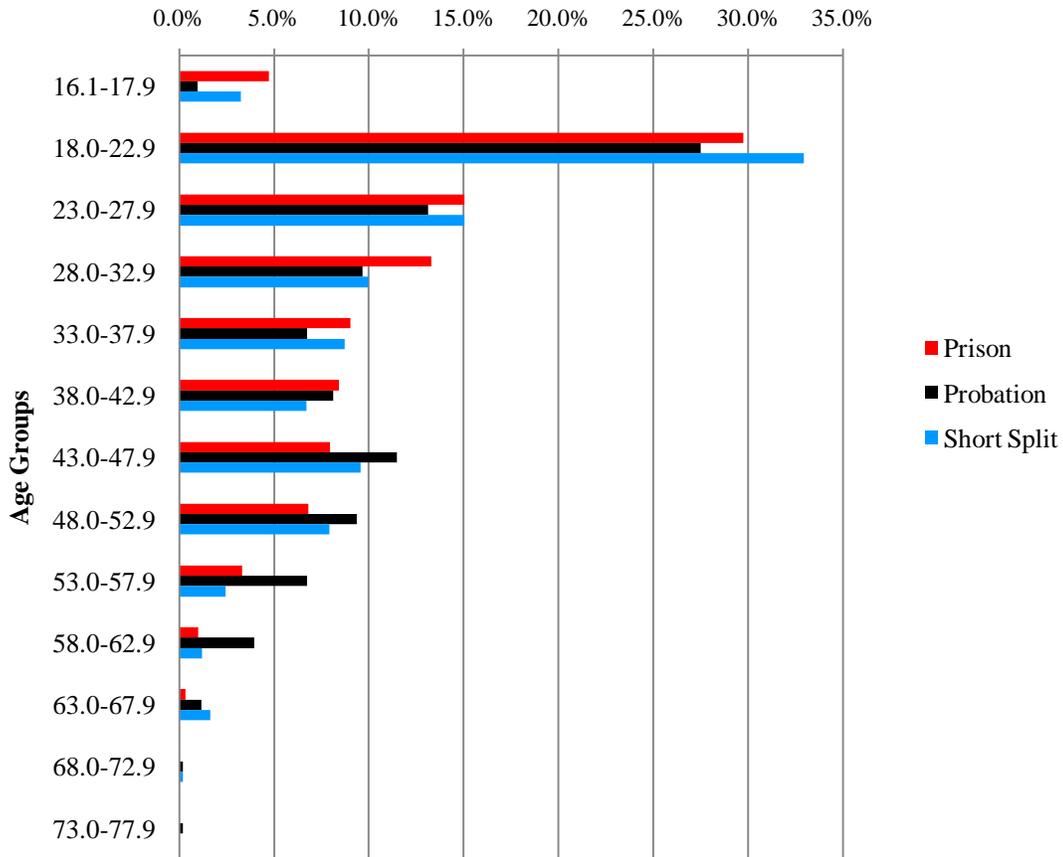


**Close-up of highest three age intervals:**



Despite the slight surge of probation sentences for older offenders, the proportion of the three primary sentence types is fairly consistent over all age ranges, relative to each other (Figure 19). Each type of sentence was imposed most frequently for the 18.0 to 22.9 age group, and then gradually decreased for offenders in their late twenties onward. It does appear that a higher proportion of prison sentences were imposed on offenders under the age of 58, where as offenders 58 years of age and older experience a higher rate of probation sentences.

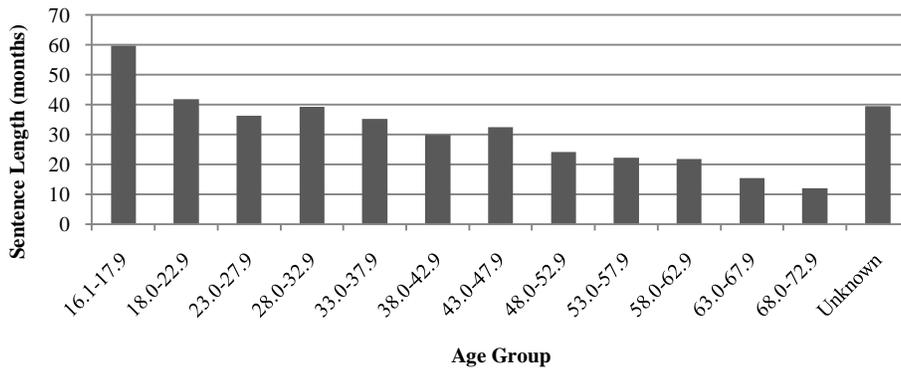
**Figure 19: Proportion of Sentence Type Imposed by Age Group**



As with the imposition of prison sentences, length of incarceration also appears to decrease gradually with age. When assessing length of incarceration strictly for prison sentences (not including short splits), it appears that felony counts committed by the youngest offenders (16.0-17.9) carry the highest average incarceration length (58.21 months), and the oldest offenders receiving prison sentences (68.0-72.9) had the shortest average sentence lengths imposed (12 months).<sup>18</sup> It is expected that the offenders under 18 would have disproportionately long average sentences, as they are only eligible to be tried as adults if they are charged with offenses in high severity groups; as a result, that age group is disproportionately more likely to have lengthy incarceration sentences, as less severe crimes would remain in the juvenile system.

<sup>18</sup> This finding does not take criminal history scores into consideration.

**Figure 20: Average Length of Incarceration across Age Groups<sup>19</sup>**



In addition to grouped age ranges, the relationships between offender age, criminal history score, and incarceration length can also be observed through calculating correlation values.<sup>20</sup> This analysis reveals that the relationship is too weak to determine if either age or criminal history is more likely to impact the length of incarceration.<sup>21</sup>

**Figure 21: Correlation Values for Incarceration Length, Age, and Criminal History (n=3351)<sup>22</sup>**

	Age	Prison Sentence	Criminal History
Age		-0.123	-0.274
Prison Sentence	-0.123		0.065
Criminal History	-0.274	0.065	

<sup>19</sup> The group 73.0-77.9 is not included in this graph as no offenders within that age range were sentenced to prison.

<sup>20</sup> A positive correlation value indicates that the two variables being observed increase or decrease alongside one another; a negative relationship indicates that as the values for one variable increase, the other variable decreases.

<sup>21</sup> Age of offender at the time of offense and the length of incarceration have a correlation coefficient indicating that there is a weak, negative relationship. This indicates that in general, as an offender's age increases, the length of incarceration (if sentenced to prison) decreases. The weak nature of this relationship suggests that the two variables do not act this way consistently. As the youngest offenders are disproportionately sentenced to more severe crimes (as less severe crimes remain in the juvenile system), it is expected that they would receive more punitive sentences. A weak, positive relationship exists for the criminal history score and prison sentence, indicating that the two variables increase together. This finding is surprising because, given the way sentences are determined, it would be expected that criminal history and prison sentence length would increase together. Regardless of direction, the correlation values for both relationships are so weak that it is not possible to conclude that either age or criminal history is more related to incarceration length. Interestingly, the correlation between age and criminal history is not only weak but also negative, indicating that a number of younger offenders have higher criminal history scores than older offenders. This is contrary to what would be expected, as criminal history is typically accrued over time, so it would be presumed that a strong positive correlation between age and criminal history would exist.

<sup>22</sup> Only 2,278 of the 2,762 prison sentences reported in 2010 were included in the calculation of the above correlation values. Criminal history information could not be verified for 484 of the Prison cases in the Commission's database. In total, 907 counts were not included in this analysis due to missing criminal history information. This issue relates to the transitional nature of the data collection procedures this year, and should be resolved in future reports, at which time the Commission will be using data solely from its automated database, and inputting criminal history values in a similarly automated fashion.

Due to this data issue, for sections of this report referring to criminal history or compliance (for which criminal history scores are required in order to produce a calculation), the sample size has been reduced to 3,422 counts sentenced.

## CHAPTER FOUR

### COMPLIANCE WITH THE GUIDELINES

#### I. Defining Compliance and Sentencing Within the Box

Conformity to the D.C. Voluntary Sentencing Guidelines begins with identifying the appropriate sentencing box for a particular felony offense on the Master Grid or the Drug Grid. Each box reflects the intersection of the Offense Severity Group for the crime and the criminal history score of the offender. The Offense Severity Group for each conviction by plea or verdict is determined by its ranking within the Guidelines, which group felony offenses according to their severity level (the more serious an offense, the lower the severity group number). The criminal history score is determined by a series of Guidelines rules, which primarily account for the type, number, and severity of prior convictions and also the length of time between the imposition or expiration of the offender's last sentence and the commission of the instant offense. Once calculated, the criminal history score is assigned a letter A through E, with A representing little or no prior record, and E representing the highest scores of six or more points.<sup>23</sup>

The Master Grid and the Drug Grid each contain three types of sentence boxes.<sup>24</sup>

- |                      |                                   |
|----------------------|-----------------------------------|
| (1) White/Unshaded - | Prison only                       |
| (2) Dark Shaded -    | Prison or Short Split             |
| (3) Light Shaded -   | Prison, Short Split, or Probation |

Of the 45 boxes on the Master Grid, 35 are white/unshaded, prison only boxes, four are dark shaded, short split permissible boxes, and six are light shaded, probation eligible boxes. On the Drug Grid, five of the 15 boxes are white/unshaded, prison only boxes, three are dark shaded, short split permissible boxes, and seven are light shaded, probation eligible boxes.

While the options within a box cannot change, the ranges within each box can be expanded by certain statutory enhancements.<sup>25</sup> These provisions are based on victim's status (e.g. senior citizen, bias-related), repeat offenses, three strikes laws, statutory aggravating factors, and additional drug or gun related penalties. A sentence may also be imposed above or below the range in the box if a valid departure principle is employed and noted on the record.<sup>26</sup>

When imposing a compliant sentence, a judge chooses a prison term within the appropriate Guidelines range dictated by a particular box, subject to the above-referenced enhancements or

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<sup>23</sup> Specific provisions governing Offense Severity Groups and criminal history scoring under the Guidelines can be found in the *Voluntary Sentencing Guidelines Manual*, available at <http://sentencing.dc.gov>.

<sup>24</sup> Long split prison sentences are appropriate in any grid box.

<sup>25</sup> The Guidelines do not change statutory or mandatory minimums, and the court has no discretion to sentence below the mandatory minimum.

<sup>26</sup> Departure principles are aggravating and mitigating factors that permit the court to sentence outside the box; if the court finds one of the factors, or another substantial and compelling reason comparable in gravity to these factors, the court is not bound by the grid options or ranges.

adjustments and, for each count of conviction, employs the consecutive and concurrent sentencing rules set forth in the Guidelines. In appropriate boxes the judge may suspend some or all of the prison term, and place the defendant on probation.

## II. Sentencing Trends Using the Drug Grid

In 2010 the analysis of compliance revealed several important observations, some of which are familiar, and some that are new. In an initial analysis of the 2010 Drug Grid,<sup>27</sup> it is clear that strict adherence to the Guidelines is not absolute, as there a number of apparently non-compliant sentences shown in Figure 22. The dispositional non-compliance displayed in criminal history categories D and E could be related to judges' concerns about sentencing older offenders with long histories of substance abuse to prison. However, as previously stated, it is possible for these sentences to be compliant, if mitigating or Criminal Rule 11(e)(1)(c) provisions are applicable.

**Figure 22: 2010 Sentencing within the Drug Grid**

Ranking Group	Sentence Type	Criminal History Score					Total
		0 to 0.5 A	0.75 to 1.75 B	2.0 to 3.75 C	4.0 to 5.75 D	6.0+ E	
Group 1	Prison	3	4	7			14
	Probation		1				1
Group 2	Prison	51	95	113	54	32	345
	Short Split	34	30	28	8	3	103
	Probation	93	36	27	5	1	162
Group 3	Prison	88	99	101	48	21	357
	Short Split	27	35	22	18		102
	Probation	170	69	49	6	5	299
<b>Total</b>		466	369	347	139	62	1383

Under the Guidelines, each count sentenced has a prison term imposed, which should fall within the range in a given box; suspension of some or all prison time determines the nature of the sentence imposed (e.g. probation, short split, or prison). Figure 23 summarizes the typical prison length initially imposed, though not necessarily executed, for each box within the Drug Grid.

<sup>27</sup> A new Drug Grid will be implemented on June 15, 2011. Data in the Annual Report issued in 2012 will include sentences based on both the above grid as well as the new grid, and will not be comparable to the data presented above.

**Figure 23: Distribution of Felony Drug Sentences within Grid Cells**

Ranking Group	Imposed Sentences	Criminal History Score				
		0 to 0.5 A	0.75 to 1.75 B	2.0 to 3.75 C	4.0 to 5.75 D	6.0+ E
Group 1	<b>Guideline Range</b>	<b>30.0-72.0</b>	<b>36.0-78.0</b>	<b>41.0-84.0</b>	<b>48.0-90.0</b>	<b>54.0+</b>
	top 25% of cell	3	0	0		
	middle 50% of cell	0	3	5		
	bottom 25% of cell	0	2	2		
Group 2	<b>Guideline Range</b>	<b>12.0-30.0</b>	<b>16.0-36.0</b>	<b>20.0-42.0</b>	<b>24.0-48.0</b>	<b>28+</b>
	top 25% of cell	17	11	2	0	
	middle 50% of cell	66	60	45	21	N=36
	bottom 25% of cell	95	90	121	46	
Group 3	<b>Guideline Range</b>	<b>6.0-18.0</b>	<b>10.0-24.0</b>	<b>14.0-30.0</b>	<b>16.0-36.0</b>	<b>22.0+</b>
	top 25% of cell	59	21	9	5	
	middle 50% of cell	134	68	46	20	N=26
	bottom 25% of cell	92	114	117	47	

The benefit of looking at sentences by individual grid cell in Figure 23 is that it identifies the distribution of sentences within the guidelines compliant range for each cell. If a high proportion of sentences within a box fall towards the high or low end of a range, it might suggest that current sentences for certain offenses are too lenient or punitive and adjustments to the Guidelines ranges may be necessary. The sentences included in Group 1 are all “while armed” offenses and subject to a statutory provision which implements a mandatory minimum sentence of 60 months when a firearm is involved.<sup>28</sup> It is important to note, however, that the sentences tallied above are not the actual sentences executed, but the incarceration lengths initially imposed; if the actual time in prison were reported above, then many of the short split and probation permissible boxes would inaccurately appear to have a high percent of apparently non-compliant or “outside the box” sentences.

The data in Figure 23 indicate that drug sentences for Drug Groups 2 and 3 typically fall in the lower half of the guidelines compliant range in a box. While slightly more than half of the sentences within these boxes are prison sentences, it is possible that the lower sentences are related to the high occurrence of entirely or partially suspended prison sentences, as many of these boxes are probation and/or short split eligible. Interestingly, the data also reveal that none of the mean or median values for individual cells were in the top 25%.

<sup>28</sup> The “while armed” provision in D.C. Code § 22-4502(a) reads that any person who commits a dangerous crime while armed, “May, if such person is convicted for the first time of having so committed a crime of violence, or a dangerous crime in the District of Columbia, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment which may be up to, and including, 30 years ... and shall, if convicted of such offenses while armed with any pistol or firearm, be imprisoned for a mandatory-minimum term of not less than 5 years.”

### III. Sentencing Trends Using the Master Grid

Similar to the Drug Grid, overall frequencies on the Master Grid appear to be consistent with years past. As the severity of an offense group decreases (indicated by increasing group number), the frequency of counts sentenced appears to increase (Figure 24). The two lowest severity groups, (Groups 8 and 9) represent 61.4% (n=1,252) of all felony counts on the Master Grid for which the Commission has criminal history scores. These findings are consistent with typical patterns in crime, as homicide, armed property offenses, and serious violent crimes are far less common than unarmed or incomplete (attempted) property crimes, and weapon possession offenses.

**Figure 24: 2010 Sentencing within the Master Grid**

Ranking Group	Sentence Type	Criminal History Score					Total
		0 to 0.5 A	0.75 to 1.75 B	2.0 to 3.75 C	4.0 to 5.75 D	6.0+ E	
Group 1	Prison	2	5	4	2	2	15
Group 2	Prison	23	11	7	7	2	50
Group 3	Prison	22	8	18	2	2	52
Group 4	Prison	9	6	5	3	2	25
Group 5	Prison	71	70	54	8	29	232
	Short Split	3					3
	Probation	3	1				4
Group 6	Prison	76	71	53	21	22	243
	Short Split	23	4				27
	Probation	14	3				17
Group 7	Prison	16	23	33	13	13	98
	Short Split	5	4	1			10
	Probation	7	3	1			11
Group 8	Prison	175	205	122	66	45	613
	Short Split	76	30	16	1		123
	Probation	172	26	4	1		203
Group 9	Prison	43	63	79	34	15	234
	Short Split	7	7	9	3		26
	Probation	30	10	10	3		53
<b>Total</b>		777	550	416	164	132	2039

As was true for felony drug offenses, each count sentenced on the Master Grid has a prison term imposed, and whether or not some or all of that prison time is suspended determines the nature of sentence imposed. Figure 25 depicts the distribution of type of sentence imposed within each grid cell on the Master Grid, although not necessarily executed.<sup>29</sup> One notable difference between the Master Grid and Drug Grid is that for the two least severe groups on the Master

<sup>29</sup> As this figure captures the middle 50% of sentences for each box, boxes with higher numbers of offenders are more likely to fall within the guidelines range than boxes with few offenders, which are more prone to being influenced by individual outliers.

Grid, the highest percent of incarceration lengths tend to fall in the middle 50% for the majority of cells.

Similar to the Drug Grid, many of the actual sentences for the less severe charges tend to be towards the lower 50% of the box. It appears that the typical incarceration length imposed for a felony count, regardless of sentencing grid used, is in the lower 50% of the designated range within a specific grid box.

**Figure 25: Distribution of Felony Sentences within Master Grid Cells**

Ranking Group	Imposed Sentence Lengths	Criminal History Score				
		0 to 0.5 A	0.75 to 1.75 B	2.0 to 3.75 C	4.0 to 5.75 D	6.0+ E
Group 1	Guideline Range	360.0-720.0	360.0-720.0	360.0-720.0	360.0-720.0	360.0+
	top 25% of cell	0	1	0	0	N=2
	middle 50% of cell	0	0	2	1	
	bottom 25% of cell	2	4	2	1	
Group 2	Guideline Range	144.0-288.0	156.0-300.0	168.0-312.0	180.0-324.0	192.0+
	top 25% of cell	10	2	4	2	N=2
	middle 50% of cell	8	3	2	4	
	bottom 25% of cell	5	6	1	1	
Group 3	Guideline Range	90.0-180.0	102.0-192.0	114.0-204.0	126.0-216.0	138.0+
	top 25% of cell	11	2	5	2	N=2
	middle 50% of cell	6	1	4	0	
	bottom 25% of cell	5	5	9	0	
Group 4	Guideline Range	48.0-120.0	60.0-132.0	72.0-144.0	84.0-156.0	96.0+
	top 25% of cell	5	2	2	0	N=2
	middle 50% of cell	2	3	2	1	
	bottom 25% of cell	2	1	1	2	
Group 5	Guideline Range	36.0-84.0	48.0-96.0	60.0-108.0	72.0-120.0	84.0+
	top 25% of cell	19	15	3	2	N=29
	middle 50% of cell	39	17	10	2	
	bottom 25% of cell	19	39	41	4	
Group 6	Guideline Range	18.0-60.0	24.0-66.0	30.0-72.0	36.0-78.0	42.0+
	top 25% of cell	18	13	10	2	N=22
	middle 50% of cell	24	24	22	11	
	bottom 25% of cell	71	41	21	8	
Group 7	Guideline Range	12.0-36.0	18.0-42.0	24.0-48.0	30.0-54.0	36.0+
	top 25% of cell	9	8	6	0	N=13
	middle 50% of cell	5	6	13	6	
	bottom 25% of cell	14	16	16	7	
Group 8	Guideline Range	6.0-24.0	10.0-28.0	14.0-32.0	18.0-36.0	22.0+
	top 25% of cell	130	90	38	16	N=45
	middle 50% of cell	177	85	54	20	
	bottom 25% of cell	116	86	50	32	
Group 9	Guideline Range	1.0-12.0	3.0-16.0	5.0-20.0	7.0-24.0	9.0+
	top 25% of cell	48	17	15	7	N=15
	middle 50% of cell	23	40	49	19	
	bottom 25% of cell	9	23	34	14	

#### IV. Assessing 2010 Compliance

As stated earlier, 2010 was a transitional year for the Commission with regard to data capturing and assessment practices. These revamped practices included the implementation of a new protocol for researching reasons behind “outside the box” sentences. In 2010, roughly 300 counts appeared to have “outside the box” sentences. To determine if these sentences were in fact compliant, due to aggravating or mitigating factors, data entry error, Criminal Rule 11(e)(1)(c) plea dispositions, etc., Compliance Surveys were transmitted to the sentencing judge for each flagged count. Additionally, reasons behind the apparently non-compliant sentences were researched by accessing Courtview and the Judgment and Commitment Order documents. Reasons were provided for 203 apparently non-compliant counts for 2010. The following were the most common reasons for sentencing outside the box:

- Aggravating or mitigating circumstances
- Sentence was actually for a probation revocation and not subject to the Guidelines
- Incorrect criminal history score was reported
- Court inadvertently imposed a non-compliant sentence

Figure 26 displays the frequencies of the different aggravating and mitigating factors that were applied to a number of guideline departure sentences. Mitigating Factor 10 was the most common, particularly for drug offenses.<sup>30</sup> In almost every case in which the factor was listed, further detail most often explained that the offender was a “go between,” or that the crime was principally accomplished by another individual. Two of the counts with Mitigating Factor 10 explanations involved an offender who had been detained by Immigration and Customs Enforcement prior to their hearing. Other explanations included for Mitigating Factor 10 sentences were consideration of offender’s rehabilitative efforts, compliance with conditions of release, length of time between crimes and sentencing, and overrepresentation of criminal history.

Of the six counts to apply aggravating factors to sentencing, three were from a single case, which involved conspiring to murder a government witness. Similarly, ten of the 19 counts for Mitigating Factor 9 (the sentence seems excessive in relation to crime) were also from a single case, involving assault with intent to rob, and multiple counts of possession of a firearm during a crime of violence and robbery.

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<sup>30</sup> Mitigating Factor number 10: “any other substantial and compelling basis, as articulated by the sentencing judge, comparable in gravity to those listed in 1 to 9...which does not amount to a defense but which substantially mitigates the seriousness of the offense or the defendant’s culpability.”

**Figure 26: Factors Explaining “Outside the Box” Sentences for Both Grids**

		Compliance Factor										Total
		M2	M3	M4	M5	M6	M7	M9	M10	A 3, 4 and/or 5 <sup>31</sup>	A11	
Severity Group	Drug 1											0
	Drug 2				1	6	3	2	12			24
	Drug 3			1	1		4	1	19		1	27
	Master 1											0
	Master 2											0
	Master 3						1		1			2
	Master 4											0
	Master 5		1		1		2	8	2	1		15
	Master 6				1		1	5	4	1		12
	Master 7						1	1	1			3
	Master 8	1		1	1	1	1	2	5	1	1	14
Master 9					1	1		1	1		4	
											101	

In nearly every situation in which a sentence appeared to be non-compliant, an explanatory factor, such as those listed above, was identified thereby making the sentence compliant. Only fifteen of the 208 counts for which departure reasons were received were actually non-compliant; additionally, four of the 15 departures were unintentional, and not a conscious decision by the judge. If 2010 was a typical year – and there is no reason to believe it was not – these findings would suggest that only 7.2% of cases that in previous years would have been reported as non-compliant represented a true choice by the sentencing judge not to follow the Guidelines.

There are 100 counts for which the Commission did not receive explanations. As there are only 15 non-compliant departures out of 208 from the remainder of the data that contain criminal history information, it is highly unlikely that all 100 would represent non-compliant sentences. Although the Commission has received information on two-thirds of apparently non-compliant counts and given the limitation of the reported criminal history data, reporting on the exact compliance rate for 2010 is challenging and potentially misleading. If one assumes the same compliance rate for these 100 cases as for cases in which explanations from judges are present, then the 2010 overall compliance rate would be 99.55%. As the 100 unverified cases were not selected at random and most likely do not have the same compliance rate as the others, an extreme assumption that none of the 100 cases were compliant would produce an overall compliance rate for 2010 of over 96%. Thus, the Commission can say with confidence that the Court has been imposing sentences under the Guidelines regularly, as fewer than 4% of felony sentences were non-compliant.<sup>32</sup>

<sup>31</sup> These three aggravators are grouped together because two of the four counts in that column had all three, and by reporting them separately, it would appear that there were aggravators for three times more counts (as three of the aggravators were reported for a single count, twice in the same case).

<sup>32</sup> The Commission considers a sentence to be compliant with the Guidelines if it departs from the recommended sentence for reasons that are built into the system, including a non-exclusive list of mitigating and aggravating factors or unusual plea agreements in which the judge agrees to be bound by the sentence terms. Obviously, if all departures, including these “authorized” departures were considered non-compliant, the resulting compliance rate would be lower.

## CHAPTER FIVE

### D.C. CRIMINAL CODE REVISION PROJECT

Apart from its responsibility to monitor the Voluntary Sentencing Guidelines, the Commission has been directed to develop a set of recommendations for the Council of the District of Columbia and the Mayor on criminal code reform. This important process is a challenging one and requires a significant investment of time and resources. The Commission's efforts will assist the Council in providing clarity and consistency in the criminal laws for the District of Columbia.

#### I. History and Background

Prior to 1974, the District of Columbia Code had not undergone a major revision since its adoption at the turn of the twentieth century. In 1974, Congress established the District of Columbia Law Revision Commission to evaluate, reorganize and revise the code.<sup>33</sup> The Law Revision Commission submitted to Congress criminal code revisions in 1978, which recommended elimination of certain penalty inequities and simplification of complex areas of the Code.<sup>34</sup> While there have been periodic revisions of major sections of the Criminal Code in the following years, such as the Theft and White Collar Crimes Act of 1982 and the Anti-Sexual Abuse Act of 1994, it does not appear that the Law Revision Commission's recommendations were ever enacted into law. Moreover, this group has not been active for many years.

In 2006, the Committee on the Judiciary of the District of Columbia Council turned its attention to a complete reexamination of D.C.'s criminal statutes to address disorganization and redundancies within the code.

. . . The existence of overlapping provisions and confusing or outdated language, penalties that are disproportional to the crime or disparate from penalties of similar crimes, and other inconsistencies impede the fair and equitable administration of the law.<sup>35</sup>

The result was legislation which (1) amended the Commission's mandate to include criminal code revision in addition to its sentencing policy work, and (2) increased its membership to reflect additional perspectives that would enhance the code revision effort.

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<sup>33</sup> H.R. 12,832, 93d Cong., 2d Sess. (1974); *see also* H.R. REP. NO. 924, 93d Cong., 2d Sess. (1974); S. REP. NO. 1076, 93d Cong., 2d Sess. (1974)

<sup>34</sup> HOUSE COMMITTEE ON THE DISTRICT OF COLUMBIA, 95<sup>TH</sup> CONG., 2D SESS., NEW BASIC CRIMINAL CODE FOR THE DISTRICT OF COLUMBIA (Comm. Print 1978) (District of Columbia Law Revision Commission Recommendation).

<sup>35</sup> Report on Bill 16-172, The Advisory Commission on Sentencing Act of 2006.

## **II. Legislative Mandate**

The Commission's legislative mandate with regard to criminal code revision is 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.

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.

D.C. Code § 3-101.01 (a), (c). The Commission's current deadline for code reform is September 30, 2012. D.C. Code § 3-101.01 (b).

## **III. Accomplishments to Date**

The Commission's first recommendation for criminal code revision addressed penalty proportionality. On January 11, 2011, the Commission submitted to the Council and Mayor the proposed "Fine Proportionality Act of 2011" ("the Act"). For each D.C. Code criminal offense punishable by imprisonment, the proposed legislation would make the fine for the offense proportional to the maximum term of imprisonment for the offense.

The Commission's transmittal letter explained in detail the many reasons for comprehensive changes to the fines for criminal offenses under District law. The primary reason is the

considerable disproportionality across criminal statutes taken as a whole. The Commission's research found wide ranges in fine provisions within the District's laws with no apparent explanation or justification for the disparity. For example, Attempted Robbery is punishable by imprisonment and a fine of \$500 while Robbery is punishable only by imprisonment. Drug felonies and most sex offenses have exceptionally large fine maximums, while Murder, Kidnapping and many other crimes of violence have no fine provisions at all.

The Commission examined the approach to fine proportionality taken by the federal and state governments and elected to model the proposed Act on 18 U.S.C. § 3571. Like its federal counterpart, the proposed Act would trump the fine provisions found in hundreds of statutes scattered throughout the code, without amending each one individually. With a single enactment, maximum fines would be proportional to the maximum imprisonment terms set forth in each criminal statute. In addition, the proposed Act would be applicable to future enactments and amendments by the Council, unless the Council expressly chose to exempt the new legislation from the reach of the statute.

In developing its fine proportionality recommendation, the Commission capitalized on its previous year's investment of constructing a database that cataloged information on every criminal provision in the D.C. Code. Among numerous data elements contained in that database, was information about fine maximums for every offense in any part of the Code.<sup>36</sup>

#### **IV. Funding Options and Next Steps**

The Commission's January 26, 2010, Project Proposal and its 2009 Annual Report presented a number of options for approaching code reform. Each of these options was informed by the Commission's examination of the fairly recent – and well-staffed – code reform efforts in several states, including Arizona and Illinois, and earlier efforts in the District and at the federal level. This research made clear that the allocation of resources for this project would directly impact what the Commission is able to accomplish. The Commission has only one attorney, part-time, dedicated to code reform.

The fiscal climate in which these proposals were made was and remains challenging. In an effort to meet those challenges within present budgetary constraints and complete some of the more ambitious goals in the proposals, the Commission has continued to survey sources of funding other than Council appropriations. Unfortunately, aside from the uniquely large sums that Congress made available for grants through the American Recovery and Reinvestment Act, grant funding otherwise has been impacted by the same fiscal austerity with which the Council is now struggling. Grant solicitations currently tend to be highly focused on priorities chosen by Congress or the awarding agency and target issues such as gang prevention, violent crime prevention and death penalty issues. Grants for

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<sup>36</sup> As explained in Chapter Six, the Commission recently approved an amendment of the Guidelines so that an offender's criminal history score will include prior misdemeanor convictions for any offense punishable by 90 days or more. The database was useful in reaching the decision on that amendment, and will make it easy for the Commission to produce a list of such offenses for practitioners and CSOSA presentence report writers.

projects such as criminal code reform are simply not available. In short, while the Commission continues to be vigilant in searching out such opportunities, grant funding has not been an option.

The Commission's part-time attorney will continue to make progress on code reform goals that are less ambitious than other more comprehensive options, but will nonetheless address important concerns recognized by the Judiciary Committee in 2006: "the existence of overlapping provisions and confusing or outdated language." Thus, the Commission will undertake a review of the entire code with a goal of bringing modernity and consistency to the format, language and style of the District's criminal laws. In addition, the Commission will address on a more substantive level particular areas of the law that appear to be in need of revision. The Theft and White Collar Crime Act of 1982 is one such area that has been identified. The Commission expects this year to make recommendations to enable the adoption of Title 22 as an enacted title of the D.C. Code, and to identify statutes held to be unconstitutional and common law offenses suitable for codification. These last mentioned tasks are among the specific responsibilities set out for the Commission in D.C. Code § 3-101 (a).

The Commission is dedicated to making only the most carefully-crafted and well-reasoned recommendations to the Council and Mayor on code reform. Each proposed enactment will move the District incrementally closer to a modern code, that is without unwarranted disproportionality, and that contributes to the fair and equitable administration of the law.

## **CHAPTER SIX**

### **D.C. VOLUNTARY SENTENCING GUIDELINES 2010-2011**

The Commission's legislative mandate requires it to include in its annual report any substantive changes made to the Guidelines during the preceding year, including changes in the offense severity rankings, the recommended sentencing options or prison ranges, or rules for scoring criminal history. If legislation during the year created new offenses or changed the penalties for existing offenses, the report must explain how the changes were incorporated in the Guidelines.

This year, the Commission made several significant changes to the Guidelines affecting both the offense severity of certain crimes and the criminal history scoring of particular misdemeanor convictions. These modifications, detailed below, were enacted to provide more proportional, comprehensive, and structurally efficient sentencing options under the Guidelines. As always, the Commission welcomes input from judges, practitioners, agencies and the public on the application of the Guidelines and ways to improve the Guidelines Manual as a useful resource.

The discussion of the Guidelines' modifications is grouped into five categories. Part I describes training opportunities. Part II describes the revision of the Guidelines' Drug Grid. Part III describes changes in the criminal history scoring for misdemeanor offenses. Part IV lists the additional substantive general amendments to the Guidelines and the Guidelines Manual. Part V lists offenses ranked by the Commission in the previous year. The substantive amendments to the Guidelines become effective for pleas and verdicts on or after June 15, 2011.

#### **I. Training and Education**

The Commission is available to provide training on the Guidelines to any who may desire or need it. The public is encouraged to contact the Commission with specific inquiries, and the Commission ensures that resources are available to persons seeking information on the Guidelines. However, there may be instances where a more thorough overview of the District's sentencing structure is necessary, such as a refresher course on general Guidelines application. An explanation of recent changes or significant developments to the Guidelines to assist the criminal justice community and the public during implementation may also prove helpful. The Commission and staff have extensive experience applying the Guidelines provisions in a wide variety of circumstances and welcome the opportunity to share these experiences with interested parties.

Over the past year, the Commission and staff have conducted nine training sessions for the D.C. Superior Court, the Court Services and Offender Supervision Agency, criminal justice practitioners and new staff. Trainings are tailored to the unique needs of the recipients and can include presentations ranging from an in-depth discussion of the Guidelines' development and

construction to a brief overview of the basic structure and rules of the Guidelines. In the upcoming months, the Commission plans to expand its training and education services to provide increased outreach for the public to learn about the Guidelines.

## II. Revised Drug Grid

As part of its mandate, the Commission is directed to “[p]romulgate, implement, and revise a system of voluntary sentencing guidelines for use in the Superior Court of the District of Columbia designed to achieve the goals of certainty, consistency, and adequacy of punishment...” D.C. Code § 3-101. In 2010, the Commission began revising the Drug Grid to establish a more rational and proportional sentencing structure for drug offenses under the Guidelines. This resulted in the creation of a fourth Drug Group and the redistribution of a limited number of offenses throughout the Drug Grid. The new Drug Grid will go into effect for pleas and verdicts on or after June 15, 2011.

### Appendix B -- DRUG GRID

June 15, 2011

		Criminal History Score				
	Ranking Group Most common offenses	0 to ½ A	¾ to 1¼ B	2 to 3¾ C	4 to 5¾ D	6 + E
2 Points*	<b>Group 1</b> Distribution w/a (any drug) PWID w/a (any drug)	30-72	36-78	42-84	48-90	54+
1 Point*	<b>Group 2</b> Distribution or PWID (Schedule I or II narcotic/ abusive drugs)	12-30	16-36	20-42	24-48	28+
	<b>Group 3</b> 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*	<b>Group 4</b> 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 boxes – prison or short split permissible.						
Light shaded boxes – prison, short split, or probation permissible.						

## A. Redistribution of Drug Offenses

Currently, the Drug Grid consists of three groups, ranging from the most severe armed drug offenses ranked in Drug Group 1 to the least severe drug offenses (including attempts) ranked in Drug Group 3. The revised Drug Grid will reclassify a limited number of felony drug offenses from Drug Group 2 to Drug Group 3, notably Distribution of and Possession with Intent to Distribute (PWID) marijuana and all other non-narcotic/non-abusive drugs. The attempts to commit these felony drug offenses are moved to the newly created Drug Group 4. The most common and serious felony drug offenses, Distribution and PWID of Schedule I and II narcotic and abusive drugs (primarily cocaine, heroin, PCP and methamphetamines) remain in Drug Group 2.<sup>37</sup>

The primary drug provision for Distribution and PWID of a controlled substance is set forth in D.C. Code § 48-904.01 and has four separate penalties: 30 years for Schedule I and II narcotic and abusive drugs; 5 years for Schedule I and II non-narcotic and non-abusive drugs and for Schedule III drugs; 3 years for Schedule IV drugs; and 1 year for Schedule V drugs. The current Drug Grid has all felony offenses for Distribution and PWID of any drug in Drug Group 2 regardless of the maximum penalty associated with the offense.<sup>38</sup> In the interest of proportionality and maintaining structurally effective guidelines for drug felonies, offenses with a maximum imprisonment term of 30 years will remain in Drug Group 2 while offenses with a 5 or 3 year maximum imprisonment term are moved to Drug Group 3. The changes leave Possession of Liquid PCP, which has a maximum imprisonment term of 3 years in Drug Group 3 and move Attempted Possession of Liquid PCP to Drug Group 4. Thus, the revised Drug Grid retains the use of the higher Drug Group for the most common and most serious felony drug offenses, while allowing drug felonies with smaller penalties to shift to a placement in the Drug Grid that more consistently reflects the statutory structure of the District's drug laws.

As modified, the new Drug Grid will rank felony drug offenses as follows (italicized text indicates offenses affected by this revision):

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<sup>37</sup> There are several other infrequently charged felonies in the Drug Grid, including Maintaining Place for Drugs (25 year maximum) and Enlisting minors (10 year maximum for first offense or 20 year maximum for second + offense) ranked in Drug Group 2 and Fraud (4 year maximum) and Drug Paraphernalia—Distributing to Minors (8 year maximum) ranked in Drug Group 3.

<sup>38</sup> As a practical matter, most felony drug convictions in the District are for offenses subject to a 30 year maximum. Drug offenses with 3 and 5 year maximum penalties were, and still are, uncommon. Furthermore, when the Guidelines were developed, sentencing data showed few instances of sentences approaching the 30 year maximum. The sentences actually imposed seldom exceeded five years. Nevertheless, ranking the drug offenses in this way did not distinguish between offenses punishable by 3 years and ones punishable by 30 years. This resulted in unusual disproportionality in the Drug Grid relative to the maximum statutory penalty for ranked offenses.

<b>Drug Group 1</b>	<b>Drug Group 2</b>	<b>Drug Group 3</b>	<b>Drug Group 4</b>
Distribution/PWID while armed (any drug)	Distribution/PWID of Sched. I and II narcotic and abusive drugs (heroin, cocaine, PCP, methamphetamine, etc.)	<i>Distribution/PWID of Schedule I, II and III non-narcotic and abusive drugs (including marijuana-2<sup>nd</sup> offense or &gt; ½ pound)</i>	<i>Attempt/Conspiracy – Drug Group 3 Offenses (including Attempt Distribution/PWID of marijuana and Attempt Possession of Liquid PCP)</i>
	Maintaining Place for Drugs	<i>Distribution/PWID of Schedule IV drugs</i>	
	Enlisting Minors	Possession of Liquid PCP	
	<i>Attempt/Conspiracy – Drug Group 1 Offenses</i>	Drugs-Fraud	
		Drug Paraphernalia (Dist. to Minors)	
	Attempt/Conspiracy – Drug Group 2 Offenses		

### B. Modification to Sentencing Options in the Revised Drug Grid

The changes in the Drug Grid also alter the “in/out” options for two of the boxes in Drug Group 2. Box 2C changes from a light shaded, probation permissible box to a dark shaded, short split permissible box. Box 2D changes from a dark shaded, short split permissible box to a white, prison only box.

### C. Summary of Modifications

The following Guidelines features remain unchanged from the current Drug Grid:

- Armed offenses stay in Drug Group 1.
- Distribution and PWID of Schedule I and II abusive and narcotic drugs (including heroin, cocaine, and PCP) stay in Drug Group 2. Attempts and conspiracies to commit these offenses stay in Drug Group 3.
- Possession of Liquid PCP stays in Drug Group 3.
- Enlisting Minors, Maintaining a Place for Drugs, Fraud, and Drug Paraphernalia—Distributing to a Minor remain in their respective Drug Groups.

The following Guidelines features will be changed upon the effective date of the Revised Drug Grid:

- Distribution and PWID of all other drugs (the 3 and 5 year penalty offenses, including marijuana) are moved from Drug Group 2 to Drug Group 3. Attempts and conspiracies to commit these offenses are moved from Drug Group 3 to the new Drug Group 4.
- Attempted Possession of Liquid PCP moves to Drug Group 4.
- Attempts and conspiracies to Distribute and PWID while armed are moved from Drug Group 3 to Drug Group 2.
- Box 2C changes from a light shaded, probation permissible box to a dark shaded, short split permissible box and Box 2D changes from a dark shaded, short split permissible box to a white, prison only box.

The new Drug Group 4 is assigned the following criminal history points:

Adult Convictions:  $\frac{3}{4}$  point

Juvenile Adjudications:  $\frac{1}{2}$  point

Lapsed/Revived Convictions:  $\frac{1}{4}$  point

#### D. Notice and Training

Notification of this modification to the Voluntary Sentencing Guidelines was published on April 5, 2011 to inform practitioners and the public of the new standards. These changes are effective for pleas and verdicts on or after June 15, 2011. The Commission is committed to providing agencies, practitioners, the court, and the public with any necessary information to ensure a successful implementation. Therefore, the Commission is making itself available to provide training and to answer questions regarding these recent revisions to the Guidelines.

### **III. Changes to the Criminal History Scoring of Misdemeanor Offenses**

The Commission enacted a modified rule for scoring misdemeanor offenses. Until now, only a limited number of prior misdemeanor convictions that fall outside Title 22, which contains the majority of criminal offenses, and Title 48, where drug offenses are codified, were scored. These offenses are primarily prosecuted by the Office of the Attorney General. Previously, the Guidelines did not clearly identify which misdemeanors should count and which should not count.

The modified rule would score misdemeanors according to the maximum penalty of the offense of conviction. Where the maximum penalty is 90 days or more, it is scored  $\frac{1}{4}$  point, as is now the case for any misdemeanor. Where the maximum penalty is less than 90 days, it is not scored. Only four misdemeanors, for a total of 1 point, are counted towards the criminal history score.

This new rule expands and clarifies the universe of prior convictions that are included in the criminal history score to reflect a more accurate and inclusive calculation, and it applies particularly to certain misdemeanors prosecuted by the Office of the Attorney General which, while relatively serious, previously had not been scored. For example, misdemeanor crimes such as Driving Under the Influence (DUI) and Public Assistance Fraud would now be scored in the criminal history calculation despite falling outside of Title 22 and 48. To assist with the implementation of this new rule, the Commission will provide its criminal justice partners with both training and resources to facilitate understanding of criminal history scoring.

**IV. Additional Substantive Amendments to the Voluntary Sentencing Guidelines and Guidelines Manual**

The following substantive amendments to the Guidelines become effective for pleas and verdicts on or after June 15, 2011. All references are to the Guidelines Practice Manual.

Chapter 2

- A. In section 2.2.2, the table is amended to reflect a modified rule for scoring prior misdemeanor convictions. This modified rule scores misdemeanors according to the maximum penalty of the offense of conviction. Where the maximum penalty is 90 days or more, it is scored  $\frac{1}{4}$  point. Where the maximum penalty is less than 90 days, it is not scored. Only four misdemeanors are counted towards the criminal history score for a total of one point. Further discussion of this amendment is found in Chapter Six, Section III.

The modified chart is set forth below:

PRIOR CONVICTIONS AND ADJUDICATIONS OTHER THAN ACCESSORY			
	NOT LAPSED		LAPSED AND REVIVED
	Adult Conviction	Juvenile Adjudication	Adult Felony Conviction
Master Groups 1 – 5	3	1 $\frac{1}{2}$	3
Master Groups 6 – 7 Drug Group 1	2	1	1
Master Groups 8 – 9 Drug Groups 2 - 3	1	$\frac{1}{2}$	$\frac{1}{2}$
Drug Group 4	$\frac{3}{4}$	$\frac{1}{2}$	$\frac{1}{4}$
Misdemeanor (90+ days)	$\frac{1}{4}$	0	N/A
PRIOR ACCESSORY AFTER THE FACT CONVICTIONS AND ADJUDICATIONS			
	NOT LAPSED		LAPSED AND REVIVED
	Adult Conviction	Juvenile Adjudication	Adult Felony Conviction
Master Groups 1 – 3	3	1 $\frac{1}{2}$	3
Master Groups 4 – 5	2	1	1
Master Groups 6 – 9 Drug Groups 1 - 3	1	$\frac{1}{2}$	$\frac{1}{2}$
Drug Group 4	$\frac{3}{4}$	$\frac{1}{2}$	$\frac{1}{4}$
Misdemeanors (90+ days)	$\frac{1}{4}$	0	N/A

Notes:

1. See Section 2.2.11 for scoring Contempt convictions.
2. A lapsed conviction counts only if it was a felony and only if revived. Lapsed misdemeanor convictions and juvenile adjudications cannot be revived and therefore do not count. See Section 2.2.3 for rules on lapsing of convictions and reviving of felonies. See Section 2.2.4 for rules on lapsing of juvenile adjudications.
3. A prior misdemeanor conviction is scored according to the maximum penalty for the offense of conviction: ¼ point if 90 days or more. Offenses with a maximum penalty of less than 90 days are not scored. Only four misdemeanor convictions are counted towards criminal history for a total of 1 point.
4. Juvenile adjudications are capped at 1 ½ points, unless there is more than one adjudication for an offense that counts as 1 ½ points. In that event, each such adjudication is counted and all other adjudications are not counted.
5. While a conviction or adjudication may not count in the criminal history score because it has lapsed or because a cap has been reached, a court may still consider unscored convictions and adjudications in choosing the appropriate sentence in the applicable guideline box.

- B. In section 2.2.3., the third paragraph is amended to add the sentence, “A conviction not scored under Section 2.2.9, however, cannot be used to revive another felony conviction.”
- C. In section 2.2.9, the following sentence is added: “Convictions that are not scored under this section also cannot be used to revive other felony convictions.”
- D. Rule 2.2.11 making traffic offenses exempt from criminal history scoring is repealed and deleted. Sections 2.2.12 and 2.2.13 have been re-numbered accordingly.

Chapter 4

- E. The first paragraph is modified to include the enhancement of Committing a Felony While on Release.

Chapter 7

- F. In section 7.4, the definition of crime of violence is amended to add the sentence, “The term “crime of violence” under the guidelines is used to determine consecutive and concurrent sentencing (see Chapter 6). This definition differs from that stated in D.C. Code § 23-1331(4).”

- G. In Section 7.25, the definition for Revived Conviction was corrected to make clear that all revived drug group offenses are scored differently than convictions within the ten-year window. Applicable cross-references were also added.

## Chapter 9

- H. In section 9.1, footnote 19 is modified to state: “If the court imposes a term of imprisonment greater than a year, the court must impose the term of supervised release fixed by the statute: 3 or 5 years depending on the maximum sentence for the offense. If the court imposes a prison term of one year or less, the court must choose the supervised release term, which may be up to 3 or 5 years depending on the maximum sentence for the offense.”
- I. In section 9.4, the example is modified to incorporate the amended rule articulated in section 2.2.2.

## Appendix A

- J. The redundant entry for “RSP” is removed from the list of common offenses in Master Group 9 and replaced by “Fraud.”

## Appendix B

- K. The Drug Grid is amended to add a fourth Drug Group, redistribute certain drug offenses within the grid and alter the sentencing options for two of the boxes in Drug Group 2. Further discussion of this amendment is found in Chapter Six, section II.

## Appendix C and Appendix C-I

- L. The legend is amended to add the entries, “‘V’ or ‘D’ in the Violent/Dangerous column means a crime of violence pursuant to D.C. Code § 22-4501(1) or a dangerous crime pursuant to D.C. Code § 22-4501(2)” and “‘w/a’ means an offense subject to D.C. Code § 22-4502 imposing additional penalties for committing a crime of violence while armed. See Hager v. United States, 791 A.2d 911 (D.C. 2002).”
- M. The following footnote is removed: “The Sentencing Reform Act did not go into effect until 4:59 p.m., August 11, 2000 although by its terms it was to go into effect at 12:01 a.m., August 5, 2000. If the defendant does not assert an ex post fact challenge to being sentenced under the new law this chart may be used for any offense that occurred on or after August 5, 2000.”
- N. The entry for Cruelty to Children in the first degree adds a “V” in the Violent/Dangerous column.

- O. The entry for Committing a Felony While on Release is corrected to remove the offense severity ranking and designate it an enhancement.
- P. The entries for the following offenses are revised to reflect a misdemeanor/felony value threshold of \$1,000+:
- Credit Card Fraud
  - Destruction of Property
  - Fraud (1° and 2°)
  - Receiving Stolen Property
  - Insurance Fraud (1° and 2°)
  - Tampering with VIN
- Q. The following entries are reincorporated into Appendix C and C-I:
- |   |                |
|---|----------------|
| • Detaining an individual in disorderly house for debt there contracted (§ 22-2709) | Master Group 9 |
| • Procuring for house of prostitution (§ 22-2710)                                   | Master Group 9 |
| • Procuring for 3 <sup>rd</sup> persons (§ 22-2711)                                 | Master Group 9 |
| • Operating house of prostitution (§ 22-2712)                                       | Master Group 9 |
| • Keeping bawdy or disorderly houses (§ 22-2722)                                    | Master Group 9 |

Appendix D

- R. This appendix is updated and revised.

Appendix H

- S. The Repeat Offender Provisions for 22-1804 (a) have been modified to state, “1 prior like offense” and “2 or more prior like offenses.”
- T. Committing a Felony While on Release is added to the list of Other Enhancements.

## V. Offenses Ranked in 2010-2011

- Introducing Contraband into a Prison and Possession by an Inmate: Class A Materials (§ 22-2603) Master Group 8
- Unauthorized Use of a Motor Vehicle During or to Facilitate a COV with Serious Bodily Injury (22-3212(d)(2)) Master Group 7
- Conspiracy to Commit Murder or Armed COV (§ 22-1805a (a)(2)) Master Group 5<sup>39</sup>
- Conspiracy to Commit COV if underlying offense is ≥ 15 years (not otherwise specified) (§ 22-1805a (a)(2)) Master Group 7
- Conspiracy to Commit COV if underlying offense is < 15 years (§ 22-1805a (a)(2)) Master Group 7<sup>40</sup>
- Engaging in Animal Fighting (§ 22-1001(d)) Master Group 9
- Telephone Solicitation Fraud (§ 22-3226.06 (a); § 22-3226.10) Master Group 9
- Obstructing Service of a Drug Search Warrant (§ 48.921.02 (n)) Master Group 9
- Selling, Transferring, Distributing Firearm, Destructive Device or Ammunition to Persons Under 18 (§ 7-2507.06 (1)) Master Group 7
- Assault with a Intent to Commit Mayhem While Armed (§ 22-402, 22-4502) Master Group 5
- Assault with Intent to Commit Any Other Felony While Armed (§§ 22-403, 22-4502) Master Group 5
- Cruelty to Children 1° While Armed (§§ 22-1101(a), 22-4502) Master Group 5
- Human Trafficking—Forced Labor (§ 22-1832) Master Group 5
- Attempt Human Trafficking—Forced Labor (§§ 22-1832, 22-1837) Master Group 7

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<sup>39</sup> If underlying offense is in M 6 or M 7, the conspiracy is in the same offense severity group.

<sup>40</sup> If underlying offense is in M 8 or M 9, the conspiracy is in the same offense severity group.

- Human Trafficking—Labor or Commercial Sex Acts (§ 22-1833) Master Group 5
- Attempt Human Trafficking—Labor or Commercial Sex Acts (§§ 22-1833-22-1837) Master Group 7
- Human Trafficking—Sex Trafficking of Children (§ 22-1834) Master Group 5
- Attempt Human Trafficking—Sex Trafficking of Children (§§ 22-1834, 22-1837) Master Group 7
- Human Trafficking—Documents (§§ 22-1835) Master Group 8
- Attempt Human Trafficking—Documents (§§ 22-1835, 22-1837) Master Group 9
- Human Trafficking—Benefitting financially (§§ 22-1836, 22-1837) Same as principal
- Attempt Human Trafficking—Benefitting Financially (§§ 22-1836, 22-1837) Same as principal attempt
- Human Trafficking—Enhancement (§§ 22-1837) 1½ x the term
- Possession of Liquid PCP Drug Group 3

The following offense ranking was removed:

- Armed Crime of Violence (not otherwise specified) (§ 22-4502)