

District of Columbia Voluntary Sentencing Guidelines

Issue Paper #2: Long Split Sentences

September 30, 2019

Introduction

This paper explains felony long split sentencing practices in the District of Columbia ("the District") in an effort to increase the public's understanding of the application and monitoring of the Voluntary Sentencing Guidelines ("the Guidelines") in the sentencing of felony offenses by the Superior Court of the District of Columbia ("Superior Court").

When the Superior Court imposes a sentence for an individual to serve in prison, it may suspend part or all of this term. If part of the sentence is suspended and the individual is ordered to serve more than 6 months of the time imposed in prison, the Commission categorizes the sentence as a *long split*. Generally, a long split sentence is deemed compliant with the Guidelines if both the total sentence imposed *and* the term to serve in prison are within the Guidelines recommended sentence range.

Key Findings

1. Long split sentences were the least common sentence type imposed among felony counts sentenced between 2015 and 2018 (Figure 1).
2. Weapon offenses (Figure 3) and sentences in Offense Severity Group ("OSG") M7 had relatively higher rates of long split sentences. Specifically, a long split sentence was imposed for approximately 25% of Unlawful Possession of a Firearm, Prior Felony ("FIP-PF") offenses sentenced (Table 1).
3. Long split sentences had the lowest rates of Guidelines compliance and compliance in the box.
4. Compliance in the box rates for long split sentences increased by 47% from 2015 to 2018 (Figure 5).
5. Long split sentences for Robbery in Grid box M6: A and those for FIP-PF in Grid boxes M7:B and M7:C contributed to the low compliance in the box rates.

I. Split Sentences: A Brief Overview

In the sentencing phase of a felony case, for each offense/count for which an individual is convicted, the Superior Court imposes a prison term for the individual to serve. The Superior Court may then suspend part or all of the prison term unless a mandatory prison term applies. The D.C. Sentencing Commission ("the Commission") classifies these sentences into different categories, depending on the length of the term that was suspended:

- **Prison:** *No Portion* of the sentence is suspended. The individual is to serve the entire length of the sentence in prison. This prison term is followed by a period of supervised release.
- **Split:** *Some Portion* of the sentence is suspended, as well as the period of supervised release.
 - **Long Split:** The individual is to serve time in prison for *longer than six months, followed by a period of probation.*
 - **Short Split:** The individual is to serve time in prison for *six months or less, followed by a period of probation.*
- **Probation:** The *entire* prison sentence is suspended, as well as the period of supervised release. The individual does not serve any portion of the sentence in prison.

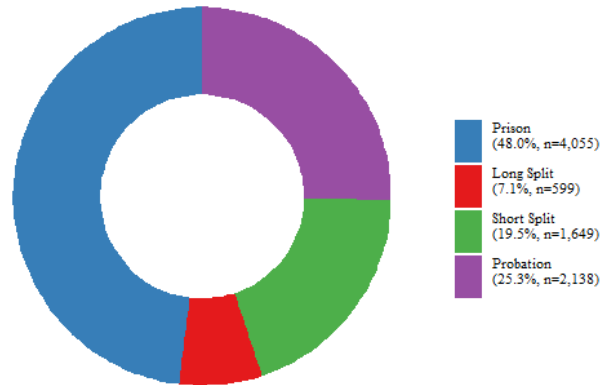
In both split and probation sentences, the individual is placed on probation for the length of time not to exceed five years. The Superior Court may re-sentence the individual and reduce, but not increase, the length of the sentence if the terms of probation are violated.

Generally, for a long split sentence to be compliant with the Guidelines, *both* the sentence imposed *and* the portion of the sentence the individual is required to serve in prison must be within the Guidelines recommended sentence range in a given Guidelines Grid box. This range is determined by the severity of the offense and the individual's criminal history score (see "III. Long Split Sentences and Voluntary Sentencing Guidelines" below).

II. Long Split Sentencing Practices

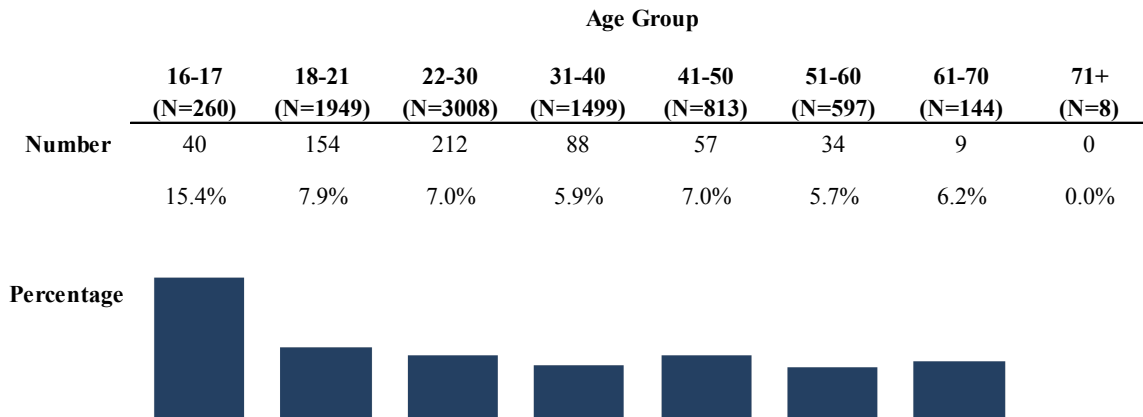
This section describes the overall trends in long split sentences in the District for felonies sentenced between 2015 and 2018. Of 8,441 felony counts sentenced, long split was the least common sentence type imposed (n=599, 7.1%), as shown in Figure 1 below. During this timeframe, fewer than 200 counts received long split sentences each year, representing less than 10% of the total sentences imposed per year.

Figure 1: Number and Percentage of Sentence Imposed by Sentence Type



Data indicated that long split sentences were more commonly imposed for individuals between 16 and 17 years of age, as shown in Figure 2. A long split sentence was imposed for 15% (40 counts) of the 260 counts sentenced in this age group. The rate of long split sentences ranged between 5% and 8% for the other age groups, with the exception of individuals 71 years of age or older. Note that only eight (8) sentences were imposed in total in the 71+ age group, and none resulted in a long split sentence.

Figure 2: Number and Percentage of Long Split Sentences by Age Group



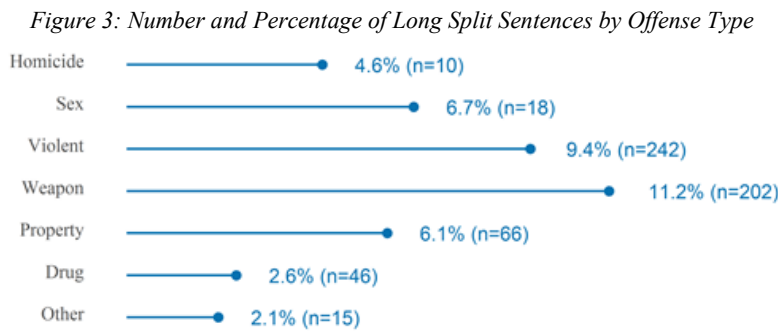
III. Long Split Sentences and Voluntary Sentencing Guidelines

Two Grids are used to determine the Guidelines recommended sentences. The Drug Grid is used for sentencing drug offenses and the Master Grid is used when sentencing all other felony offenses. These Grids are two dimensional. On the horizontal axis, Criminal History (“CH”) scores are classified into five (5) groups, which represent the individual’s criminal history. The severity (OSG) of the offense of conviction is displayed on the vertical axis. For each OSG and CH group, the color of each Grid box indicates Guidelines recommended sentence types. The numbers in each Grid box indicate the minimum and maximum recommended sentence lengths, in months. The wide range of recommended sentence lengths in each Grid box allows for judicial discretion.

Long split sentences, which are available in all Grid boxes, may be deemed compliant with the Guidelines under a variety of conditions.¹ However, they are deemed compliant *in the box* with the Guidelines only when *both* the length of sentence and the length of time to serve in prison are *within* the range of recommended sentence lengths in a given Grid box. For example, for a defendant with a CH score of B convicted of an OSG M5 offense, the imposition of a prison term of 75 months and the suspension of all but 48 months to serve in prison would represent a compliant in the box long split sentence: both the 75 months imposed and the 48 months to serve in prison are with the Guidelines recommended range of 48-96 months for this specific Grid box.

A. Impact of Offense Type and Offense Severity on Long Split Sentences

Long split sentences were most common in Weapon offenses and least common in Drug and Other offenses, as shown in Figure 3.



Specific offenses with the highest long split sentencing rates are shown in Table 1. Long split was the most common sentence type for FIP-PF offenses sentenced. Of 602 counts sentenced for this offense, one in four (24%) received a long split sentence.

Table 1: Offenses with Highest Percentage of Long Split Sentences²

Offense Type	Offense	Long Split Sentences		Total Number of Sentences
		Number	Percentage	
Weapon	FIP-PF	146	24.3%	602
Violent	Assault W/I to Commit Robbery	12	19.7%	61
Violent	Robbery	116	14.0%	829
Weapon	FIP-COV	15	13.9%	108
Property	Burglary I	11	11.1%	99

The Master Grid classifies all offenses into nine OSGs, which decrease in severity from M1 to M9. The Drug Grid has four OSGs, which similarly decrease in severity from D1 to D4. Overall, long splits were most common in Master Grid OSG M7 (18%, n=175), followed by M6 (12%, n=148). FIP-PF constituted 78% of the OSG M7 offenses sentenced to long split. Although long splits appeared to be common also in Drug Grid OSG D1 (11%, n=2), it should be noted that only 18 counts were sentenced in that OSG between 2015 and 2018.

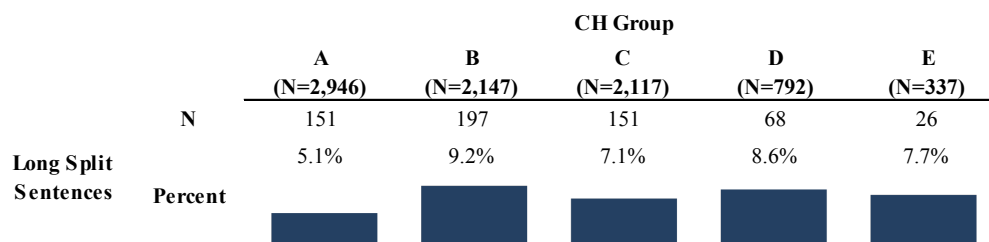
¹ For more information on determining Guidelines compliance, see D.C. Sentencing Commission, Issue Paper: Compliant in the Box Sentences (2019). <https://scdc.dc.gov/page/dc-sentencing-commission-issue-paper>.

² Offenses with fewer than 30 counts sentenced overall (i.e. regardless of the type of sentence imposed) were excluded from the results.

B. Impact of CH Groups on Long Split Sentences

CH Group did not appear to be directly related to long split sentencing decisions, as shown in Figure 4.

Figure 4: Number and Percentage of Long Split Sentences by CH Group



Although CH Group did not appear to be directly related to long split sentencing decisions, the term of imprisonment imposed increased as the individuals' CH scores increased from CH Group A to E. This is partly due to the relatively high rates of compliance with the Guidelines (see below) and the fact that the Guidelines recommended sentence lengths increase as an individual's CH score increases.

C. Long Split Sentences and Guidelines Compliance

During the period of 2015 to 2018, the overall Guidelines compliance rate was 96%, with 90% of the 8,441 sentences compliant in the box.³ The rate of compliant *in the box* sentences was lowest for long split sentences, at 65% (392 of 599 counts). This rate remained at or above 90% for prison, short split, and probation sentences.

Among long split sentences, offenses with lowest rates of compliance in the box included FIP-PF (a Weapon offense previously⁴ ranked in OSG M7) and Robbery (a Violent offense in OSG M6). Examples of long split sentences that were *not* compliant in the box for these offenses are shown in Table 2 below.

Table 2: Example Long Split Sentences not Compliant in the Box

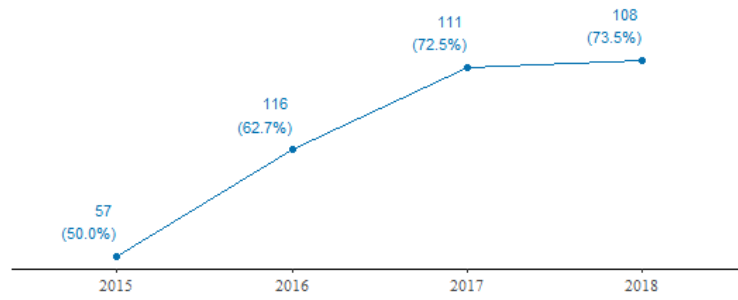
Offense		Sentenced in Guidelines Grid		Sentence	
Name	Type	Box (OSG: CH Group)	Box Range	Imposed	To Serve in Prison
FIP-PF	Weapon	M7:B	18-42 months	18 months	12 months
FIP-PF	Weapon	M7:C	24-48 months	24 months	12 months
Robbery	Violent	M6:A	18-60 months	24 months	12 months

Although compliance in the box rates for long split sentences remained below 80% year-to-year between 2015 and 2018, this rate gradually increased by 47%, from 50% in 2015 to 74% in 2018 (Figure 5). This may be due in part to increased efforts by the Commission to disseminate information on the structure of compliant in the box sentencing for long split sentences. This information helped clarify that not only the overall sentence imposed but also the sentence to serve in prison must be within the Guidelines recommended sentence range.

³ For more information on determining Guidelines compliance, see D.C. Sentencing Commission, Issue Paper: Compliant in the Box Sentences (2019). <https://scdc.dc.gov/page/dc-sentencing-commission-issue-paper>.

⁴ The Commission recently re-ranked FIP-PF from OSG M7 to M8. For more information, see the Commission's 2018 Guidelines Alert at the following address: <https://scdc.dc.gov/page/sentencing-guidelines-alert-june-2018>.

Figure 5: Long Split Sentences – Compliance in the Box Rates by Sentence Year



IV. Conclusion

Split sentences provide judges with a compliant Guidelines sentencing option that allows the defendant to serve both a period of incarceration and a period of probation as a part of the same sentence. Specifically, a compliant long split sentence is one in which *both* the term that was imposed *and* the term for the individual to serve in prison must be within the Guidelines recommended sentence range in a given Guidelines Grid box. Between 2015 and 2018, long split sentences were the least frequently imposed type of sentence, representing only 7% of all sentences. The highest rates of long split sentences were for Weapon offenses and offenses classified in OSG M7. Historically, the compliance in the box rate has been lowest for long split sentences; however, that rate has been gradually increasing since 2015, which may partially be attributed to the Commission’s increased outreach efforts to clarify the correct structure of a compliant long split sentence for criminal justice practitioners.