

### **New Approved Mitigating Departure Factor**

There is a substantial and compelling basis, as articulated by the sentencing judge, to reduce the defendant's applicable guideline sentence due to the invocation of D.C. Code § 11-947 or the circumstances that warranted the invocation of D.C. Code § 11-947."

#### **Commentary:**

Although this mitigator was drafted in response to the Covid-19 pandemic, it is intended to apply to future situations of such gravity that D.C. Code § 11-947 is invoked. Many individuals who were involved in the criminal legal system during the Covid-19 pandemic and its aftermath may have experienced numerous negative circumstances related to the pandemic and the invocation of D.C. Code § 11-947 that differed from the typical experiences of individuals who are charged with offenses in D.C. Superior Court. The invocation of D.C. Code § 11-947 resulted in the suspension of time limits that led to longer delays before indictment, trial, and sentencing. Individuals who were on pretrial release and under conditions such as home confinement also may have endured those conditions coupled with other harmful impacts related to the imposition of their pretrial release, for much longer than they would have during non-pandemic times.

This mitigation factor should be applied equally to individuals impacted by delays or negative circumstances that occurred before, during, and after the invocation of the statute where the delay or negative circumstance is due to the invocation of Section 11-947 or the circumstances warranting its invocation and where the court finds a substantial and compelling basis to reduce the individual's sentence. For example, individuals with cases pending at the time of the invocation may be able to benefit from the mitigation factor. Similarly, individuals impacted by delays following the termination of the exercise of emergency authority may be able to benefit from the mitigation factor where the delay is due to the invocation of Section 11-947 or the circumstances warranting its invocation.