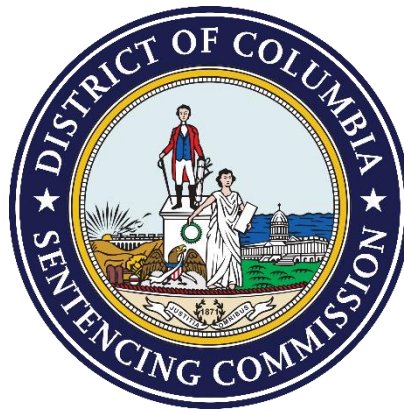




# Short Split Sentences and Time Served: A Review of Sentencing Trends and Data Limitations

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2024 Issue Paper Number 3

DISTRICT OF COLUMBIA SENTENCING COMMISSION  
441 FOURTH STREET NW, SUITE 430 SOUTH  
WASHINGTON, DC 20001  
PHONE: (202) 727-8822 FACSIMILE: (202) 727-7929  
WEBSITE: <http://sentencing.dc.gov>

### **Mission Statement**

*The mission of the District of Columbia Sentencing 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 Voluntary Sentencing Guidelines**  
**2024 Issue Paper #3: Short Split Sentences and Time Served**

**I. Introduction**

This issue paper summarizes the D.C. Sentencing Commission’s (“the Commission”) current data capabilities regarding calculating Short Split sentences, identifies what additional data points are necessary for a complete analysis, and outlines the current hurdles which prevent the Commission from receiving that information.

The District of Columbia Voluntary Sentencing Guidelines (“the Guidelines”) create a structured sentencing system used by Superior Court of the District of Columbia (“Superior Court”) judges to sentence adult defendants convicted of felony offenses in the District of Columbia. At the core of the Guidelines are two Grids used to determine the recommended sentencing range and sentencing options for each felony offense being sentenced: the Drug Grid and the Master Grid.<sup>1</sup> Within these Grids, the severity of the convicted offense(s) and the defendant’s prior Criminal History (CH) serve as markers for determining the recommended sentencing range and sentence type. The Guidelines Grids are structured in a manner that as a defendant’s CH score increases, the sentence length and/or sentence type available under the Guidelines become more severe. Sentence options are defined below.

- **Probation:** A sentence where the Court imposes a sentence within the applicable Guidelines prison range, suspends execution of the entire sentence, suspends the period of supervised release, and places the defendant on Probation for up to five years.
- **Short Split:** A sentence where the Court imposes a sentence within the applicable prison range, suspends execution of all but six months or less (but not all) of it, and places the defendant on Probation for up to five years.
- **Long Split:** A compliant long split sentence is one where the Court imposes a sentence within the applicable prison range, suspends execution of all but a term that also falls within the applicable prison range, such that the time initially served (not suspended) is equal or greater than the minimum Guidelines prison range, and places the defendant on Probation for a period up to five years.
- **Prison:** In a compliant prison sentence, the Court sentences the defendant to a prison term within the applicable Grid box range.

There are 45 boxes on the Master Grid and 20 boxes on the Drug Grid. Under the Guidelines, a Prison or Long Split sentence is an available sentencing option in every Grid box. However, only 22% of the Grid boxes on the Master Grid (10 out of 45) provide a Probation or Short Split Guidelines compliant sentence option. These sentence types are typically imposed for less severe offenses and/or individuals with a limited CH score.

**II. Sentence Types and Time Served**

*Probation v. Short Split Sentences*

It is important to clarify the distinction between Probation and Short Split sentence types, as defined in the Guidelines. A Short Split sentence is one in which the total sentence imposed is within the Guidelines recommended sentencing range, and all but six months or less (but not all) of the sentence is suspended. Therefore, when a Short Split sentence is imposed, the defendant initially serves between one day and six months incarcerated.

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<sup>1</sup> See Appendices A and B.

Credit for time served prior to sentencing counts toward the sentence type determination. This means it is possible for a defendant to receive a Short Split sentence where the executed (incarcerated) portion of their sentence has already been served prior to sentencing.<sup>2</sup> After release, the defendant is placed on a period of supervision for up to five years. If the defendant’s supervision is later revoked due to violations of their conditions of probation, the Court can impose the unserved (suspended) part of the sentence or a portion thereof. Comparatively, a Probation sentence is one in which the entirety of the sentence imposed is suspended (ESS all) and the defendant is placed on a period of supervision.

*Current Data Abilities*

Sentence type is not a data point that the Commission directly receives from the Superior Court. Instead, it is a determination that the Commission’s internal data system (GRID)<sup>3</sup> makes from three key variables: (1) Sentence Imposed,<sup>4</sup> (2) Sentence Suspended,<sup>5</sup> and (3) Time Served.<sup>6</sup> Sentence imposed and sentence suspended are numeric values taken directly from Superior Court data (IJIS 12.1), while time served is a binary value (yes/no). The GRID system determines the time served binary value by doing a search of the sentencing docket text.<sup>7</sup> If the phrase “time served” is found, then time served is set to “yes”; if it is not found, then time served is set to “no”. This computation has remained consistent since the GRID system went live in 2013.

Time served is often the determining factor between a Probation and Short Split sentence. If the entirety of the sentence is suspended and the sentencing docket text includes “time served” then the sentence is classified as Short Split because the Court recognizes that some amount of time has already been served. Without mention of “time served”, a completely suspended sentence is classified as a Probation sentence.<sup>8</sup>

Below is an example of how time served appears in a Superior Court sentencing docket.<sup>9</sup>

06/15/2018	SENCRM - Sentence	Sentence for Charge # 1, Unlawful Possession of Liquid PCP Sentence Date: 06/15/2018 Confinement Type: Confinement Time: 0 years, 18 months, 0 days. Time Susp: 0 years, 14 months, 0 days. Amount To Serve: 0 years, 4 months, 0 days. Supervised Release: 3 years, 0 months, 0 days, Suspended. VVCA Amount: 100.00 , Due: 06/15/2019 Probation Type: SUPVP, Start Date: , End Date: Probation Time: 0 years, 18 months, 0 days Probation Conditions: Maintain or Seek Employment Probation Conditions: Global Positioning System (GPS) Monitoring Probation Conditions: Drug Testing Sentencing Comments: Defendant to get credit for <b>time served</b> . All counts are to run concurrent to each other.
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<sup>2</sup> The one day (or more) of time served between the arrest and the defendant’s initial court appearance counts towards time served. Therefore, most defendants, even those released by the Court at their first hearing, have one day (or more) of time served.

<sup>3</sup> Guidelines Reporting Information Data (GRID) System.

<sup>4</sup> The sentence imposed is the length of a defendant’s sentence, including any portion of the sentence that is suspended.

<sup>5</sup> The sentence suspended is the length of the portion of a defendant’s sentence that is suspended. Defendants receiving a sentence of Probation, Long Split, or Short Split will often also receive an incarceration sentence. The judge can suspend all or part of that sentence. If the defendant violates the terms of their Probation, the Defendant may be ordered to serve all or part of the sentence that was suspended.

<sup>6</sup> Time served in sentencing refers to the period an individual has already spent in jail or prison awaiting trial and/or sentencing. This time is credited toward the total sentence imposed by the Court. All defendants receive credit for time served, as calculated by the D.C. Department of Corrections (DOC) or US Bureau of Prisons, regardless of if it is specified as part of their sentence.

<sup>7</sup> It is best practice to document on the Judgment and Commitment Order “time served” if all but time served was suspended, and if known, the amount of time served.

<sup>8</sup> Note that “time served” is not relevant for distinguishing between Prison and Long Split sentences.

<sup>9</sup> The docket is a court record of a case, containing all events and proceedings. The sentencing docket is specific to the sentencing proceeding.

The Sentencing Commission does not have access to data regarding the actual amount of time a defendant served prior to sentencing. As a result, a manual review of the docket entries is the only method currently available to the Commission to evaluate this data point. Due to the large number of cases sentenced in the Superior Court every year and the Commission’s limited resources, a manual review of all cases with time served notated in a docket entry is not attainable. Additionally, a manual calculation of time served is a notable data limitation as there is potential for data entry errors in the dockets, and/or discrepancies in the dates reported of when the confinement/release occurred. The Commission is working with agency partners in an effort to secure access to this data.

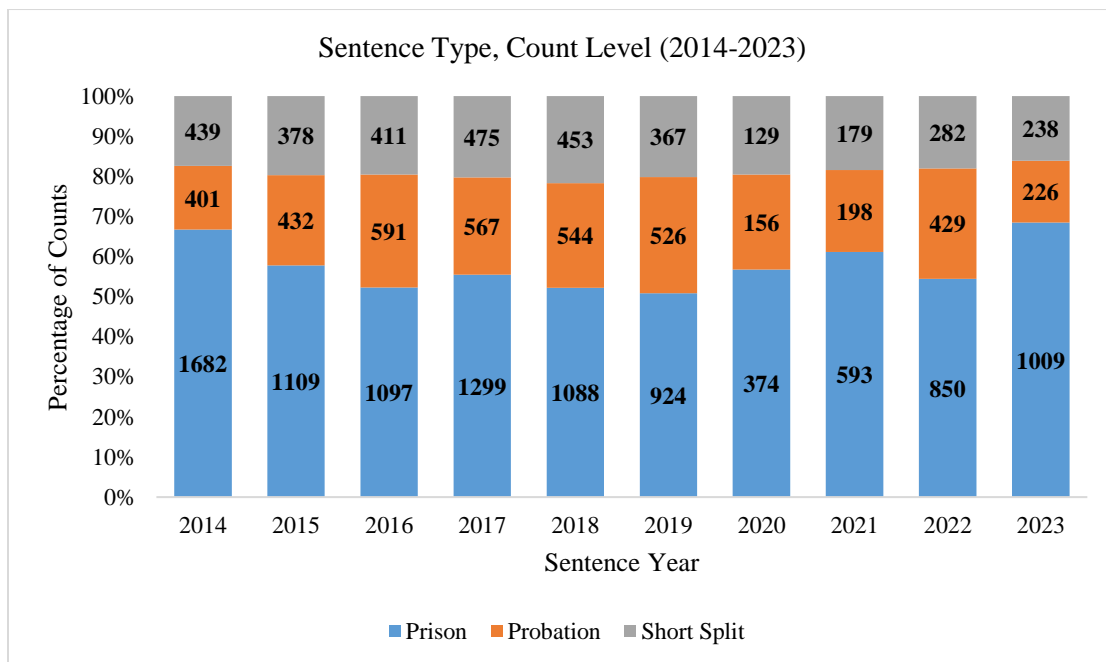
### III. Sentencing Trends

#### High-Level Overview of Sentencing Trends

The data used in this section is from the Commission’s most recent annual data “snapshot,” which was taken on January 10, 2024; the data reflects the status of convictions as of January 10, 2024.

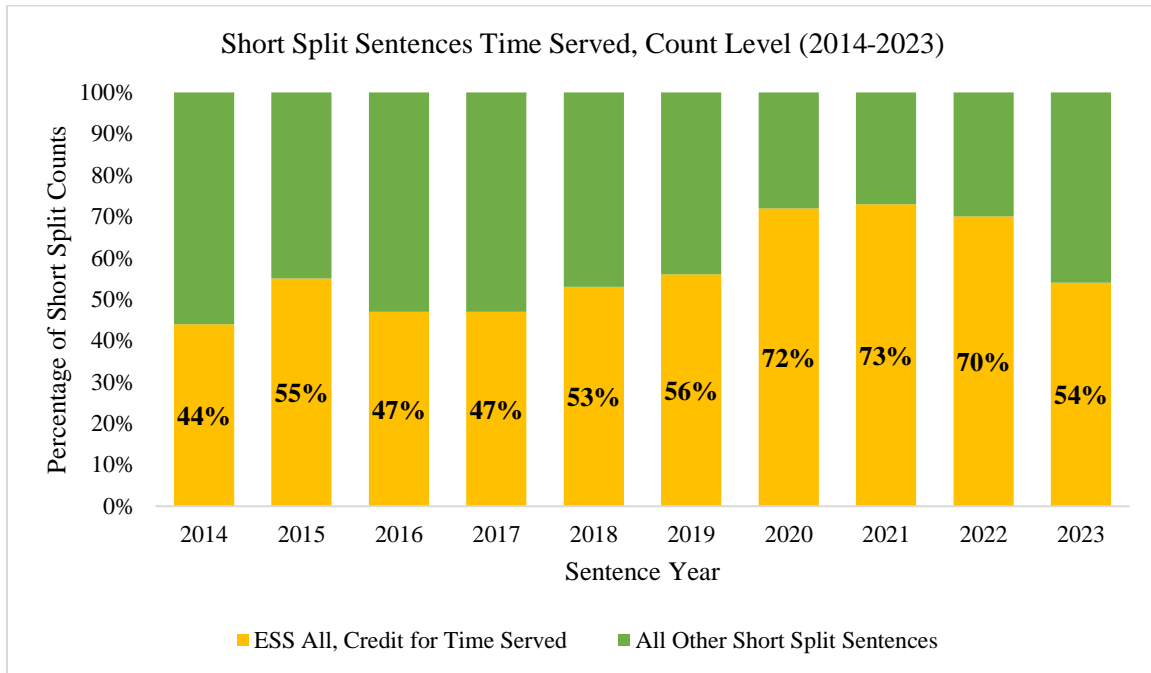
Between 2014 and 2023, there were a total of 17,446 adult felony counts sentenced in the District of Columbia Superior Court. Prison sentences made up over half (57%, n=10,025) of all counts sentenced. The average Prison sentence imposed was 46 months. Please note that in this analysis the Commission categorized Long Split and Life sentences as Prison sentences.

Nineteen percent (19%, n=3,351) of all felony counts sentenced received a Short Split sentence and 23% (n=4,070) of all counts resulted in a Probation sentence. Combined, Short Split and Probation sentences accounted for 42% of sentences imposed each year, on average.

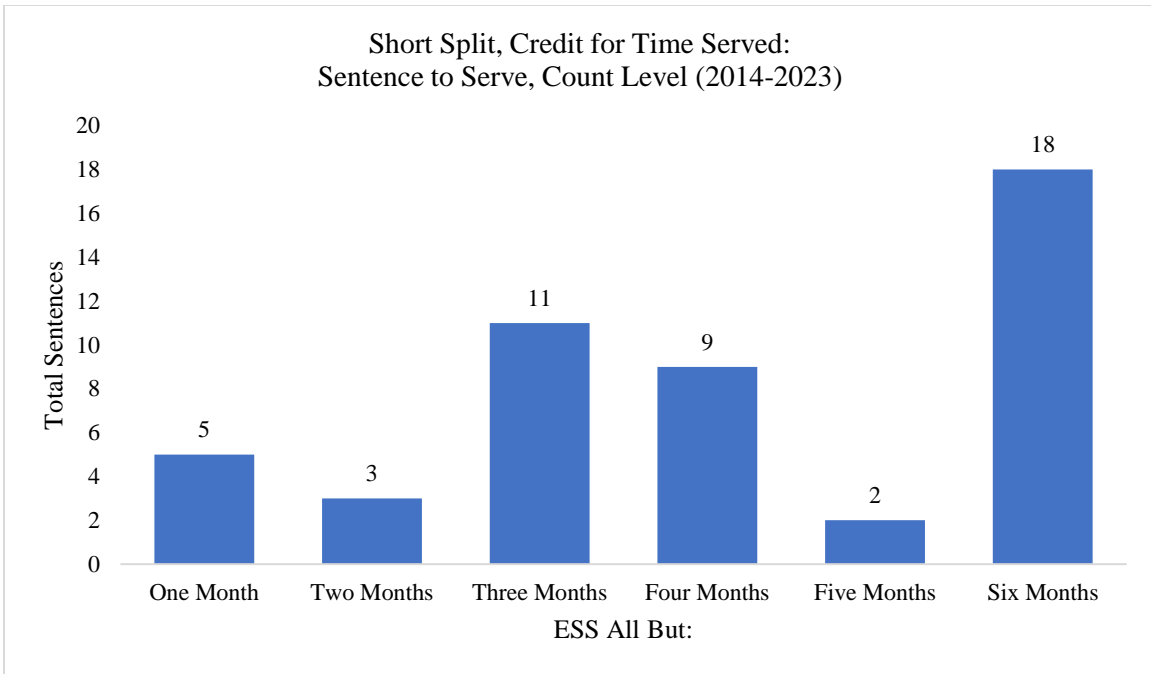


The chart below shows the proportion of Short Split sentences that would otherwise be classified as Probation if not for the mention of “Time Served.” An ‘ESS All’ sentence without the mention of time served would be marked as Probation; if the docket text does mention time served, the sentence would be marked as Short Split. This chart focuses on Short Split sentences and identifies those that are ‘ESS All, credit for time served’ (yellow bars), and Short Splits with some amount of time to serve that is less than six months but more than time served (green bars).

A docket text search revealed that 54% (n=1,811) of all Short Split sentences imposed between 2014 and 2023 would otherwise be classified as Probation, if not for the mention of ‘Time Served’. The influx shown in 2020 through 2022 is likely attributed to the COVID-19 pandemic. When these three years are removed from the ten year review, 50% (n=1,391) of all Short Split sentences imposed were ESS All, credit for time served. If there was no mention of time served in the docket text, all sentences represented by the yellow bars would be classified as Probation.



Of the 3,351 Short Split sentences imposed between 2014 and 2023, 54% (n=1,811) had mention of “time served” in the sentencing docket entry. The chart below illustrates the distribution of the suspended sentences, with the horizontal axis indicating the portion of the sentence to be served. For example, “ESS All but Three Months” means that the entirety of the executed sentence is suspended, *except* for three months. After serving these three months in prison (or three months minus any time served), the individual is released to supervision. The majority (97%, n=1,763) of Short Split sentences that received credit for time served had the remainder of their sentence suspended (ESS All); these sentences are not included in the chart below. The ESS All determination was conducted manually by subtracting the time suspended from the sentence imposed for Short Split sentences to determine how much time defendants were to serve. These findings are dependent on the D.C. Superior Court’s inclusion of the phrase “time served” when writing sentence docket entries, and therefore should be interpreted with caution as the data is heavily reliant on manual entry. While time served might not be noted on a docket entry, it cannot be waived, even if not explicitly mentioned on the Judgement and Commitment Order.



#### **IV. Conclusion**

Over the last year, Commission staff have explored the time served variable and its impact on sentencing. However, the Commission remains limited in its ability to evaluate sentence types without quantitative data on the amount of time served in a case. The Commission continues to investigate alternative methods to reliably determine the amount of time served beyond manual docket review, due to the variability in documentation and reporting.

The Commission's GRID system continues to perform as designed, with no changes to the sentencing algorithms since the system went live in 2013. Notably, as evidenced in this paper, a large portion of sentences were driven by the amount of pretrial time served by the defendant. The Commission will continue to evaluate avenues to receive this information reliably but is currently unable to report on this information due to potential inaccuracies.

V. Appendix A – Master Grid

August 2023 -- Sentencing Ranges Listed in Months

		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
3 Points*	<b>Group 1</b> 1st degree murder w/armed 1st degree murder	360 - 720	360 - 720	360 - 720	360 - 720	360 +
	<b>Group 2</b> 2nd degree murder w/armed 2nd degree murder 1st degree sex abuse 1st degree sex abuse w/armed	144 - 288	156 - 300	168 - 312	180 - 324	192 +
	<b>Group 3</b> Voluntary manslaughter w/armed 1st degree child sex abuse Carjacking while armed Assault with intent to kill w/armed Armed burglary I	90 - 180	102 - 192	114 - 204	126 - 216	138 +
	<b>Group 4</b> Aggravated assault w/armed Voluntary manslaughter	48 - 120	60 - 132	72 - 144	84 - 156	96 +
	<b>Group 5</b> PFCOV Armed robbery Burglary I Obstruction of justice Assault with intent to kill	36 - 84	48 - 96	60 - 108	72 - 120	84 +
	<b>Group 6</b> ADW Robbery Aggravated assault 2nd degree child sex abuse Assault with intent to rob	18 - 60	24 - 66	30 - 72	36 - 78	42 +
2 Points*	<b>Group 7</b> Burglary II 3rd degree sex abuse UPF-PCOV Negligent homicide Attempt 2nd degree sex abuse	12 - 36	18 - 42	24 - 48	30 - 54	36 +
1 Point*	<b>Group 8</b> Carrying a pistol (CPWL) UUV Attempt robbery/burglary UPF <sup>40</sup> 1st degree theft Assault w/significant bodily injury	6 - 24	10 - 28	14 - 32	18 - 36	22 +
	<b>Group 9</b> Escape/prison breach BRA Receiving stolen property Forgery/uttering Fraud	1 - 12	3 - 16	5 - 20	7 - 24	9 +
*Criminal History Points for prior convictions in these groups.						
White/unshaded boxes – prison or compliant long split only.						
Dark shaded boxes – prison, compliant long split, or short split permissible.						
Light shaded boxes – prison, compliant long split, short split, or probation permissible.						

## VI. Appendix B – Drug Grid

August 2023 -- Sentencing Ranges Listed in Months

		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+
	<b>Group 2</b> Distribution or PWID (schedule I or II narcotic/ abusive drugs)	12-30	16-36	20-42	24-48	28+
1 Point*	<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+
	<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 or compliant long split only.						
Dark shaded boxes – prison, compliant long split, or short split permissible.						
Light shaded boxes – prison, compliant long split, short split, or probation permissible.						