

District of Columbia Voluntary Sentencing Guidelines Issue Paper #1: Compliant in the Box Sentences

July 26, 2019

The District of Columbia (“the District”) Voluntary Sentencing Guidelines (“the Guidelines”) were developed to encourage fairness and consistency in sentencing while promoting public safety in the District. The Guidelines apply to felony offenses only and are monitored by the District of Columbia Sentencing Commission (“the Commission”) in accordance with D.C. Code § 3–101(b)(1). The District’s Guidelines are voluntary: Superior Court of the District of Columbia (“Superior Court”) judges are not required to follow them.

The purpose of the Guidelines is to achieve certainty, consistency, and adequacy of punishment with due regard to the seriousness of the offense, the dangerousness of the offender, the need to protect the safety of the community, the offenders' potential for rehabilitation, and the use of alternatives to prison where appropriate. As part of its mandate, the Commission is responsible for assessing compliance with the Guidelines and monitoring historical and emerging sentencing trends within the District.

Structure of the Guidelines

The Guidelines use offense severity and offender criminal history as the primary factors to achieve the goals of certainty, consistency, and adequacy of punishment in sentencing. The more serious an offender’s criminal history and offense of conviction, the more severe the Guidelines recommended sentence.

Two Grids are used to determine the Guidelines recommended sentences (*see* Appendix). The Drug Grid is used for sentencing drug offenses. The Master Grid is used when sentencing all other felony offenses (*see* Appendix). These Grids are two dimensional. On the horizontal axis, Criminal History (“CH”) scores are classified into five groups, which represent the offender’s criminal history. The Offense Severity Group (“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.

Guidelines Compliance

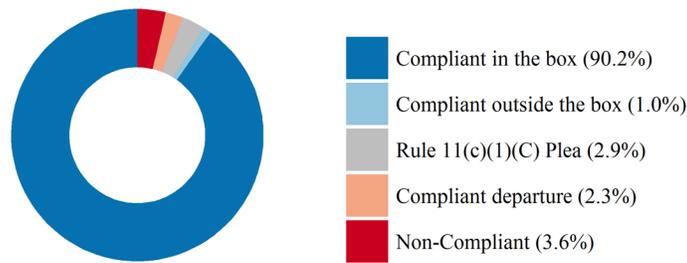
There are four ways for a sentence to be deemed compliant with the Guidelines:

1. *Compliant in the Box*: A sentence that falls strictly within the recommended sentence type and range of a given Grid box.
2. *Compliant outside the Box*: A sentence that is not within the recommended type and range but is compliant with the Guidelines due to other sentencing factors, such as a sentence that runs concurrently with a compliant greater or equal sentence.
3. *Rule 11(c)(1)(C) Plea*: A sentence resulting from an 11(c)(1)(C) guilty plea that would otherwise have been categorized as compliant outside the box or non-compliant. An 11(c)(1)(C) plea permits the defendant and the government to agree that a specific sentence or sentencing range is the appropriate disposition of the case and it binds the judge to the agreed-upon sentence once the plea agreement is accepted.

4. *Compliant departure*: An otherwise non-compliant sentence for which the sentencing judge provided a Guidelines compliant reason for departing from the Guidelines. The Guidelines include lists of aggravating and mitigating departure factors that extend judicial discretion in exceptional circumstances.

The rate of Compliant in the Box sentences is an important measure of whether Superior Court judges follow both the sentence type and length, as recommended by the Guidelines. The extent to which the Guidelines are accepted and consistently applied contributes to fair and consistent sentencing with regard to the seriousness of the offense and the criminal history of the offender. As shown in Figure 1, of the 8,441 felonies sentenced between 2015 and 2018, 90% received Compliant in the Box sentences. The overall compliance rate was 96%.

Figure 1: Compliance Rates by Subcategory



Source: D.C. Sentencing Commission 2018 Snapshot Datafile

Compliant in the Box Sentences

This section describes Compliant in the Box sentencing rates in the District for felonies sentenced between 2015 and 2018. As mentioned previously, a Compliant in the Box sentence indicates that the sentence type and length imposed were within the Guidelines recommended sentence type and range.

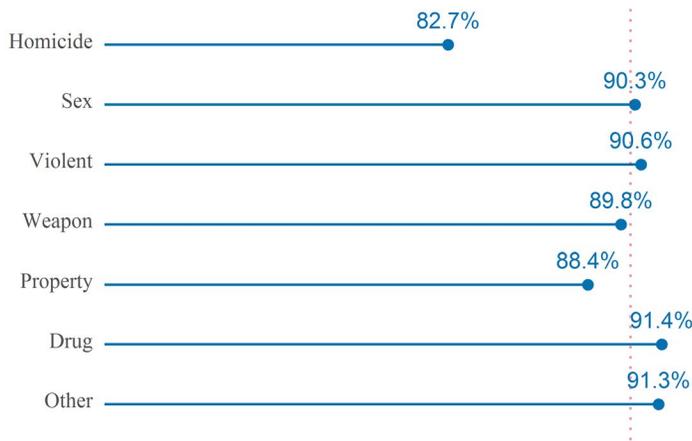
The overall Compliant in the Box rate was 90%. When comparing the Master vs. Drug Grids, the Compliant in the Box rate was around 90% for both the Master and Drug Grid as shown in Table I.

Table 1: Compliant in the Box Sentences by Guidelines Grid

Guidelines Grid	Number of Compliant in the Box Sentences	Compliant in the Box Rate
Master	5,965	89.8%
Drug	1,645	91.4%

Felony non-Drug offenses in the Master Grid are divided into six offense categories. As shown in Figure 2 below, Compliant in the Box rates remained above 80% for sentences in all six categories, as well as for Drug sentences. The highest Compliant in the Box rates were observed in Drug and Other sentence categories (91%), while Homicide sentences had the lowest Compliant in the Box rate (83%). The lower Compliant in the Box rate for Homicide sentences did not impact the overall Compliant in the Box rates due to the limited number of sentences in this offense category.

Figure 2: Compliant in the Box Rates by Offense Category



When examining individual offenses sentenced, the highest Compliant in the Box rate was 98%, while the lowest Compliant in the Box rate remained above 75%. Although the Weapon offense category exhibited an overall Compliant in the Box rate of 90%, individual weapon offenses varied as shown in Tables 2 and 3 below.

Table 2: Top Three Offenses with Highest Compliant in the Box Rates

Offense Category	Offense	Number of Compliant in the Box Sentences	Compliant in the Box Rate
Weapon	Carrying a Pistol without a License (“CPWL”)	502	98%
Drug	Unlawful Possession of Liquid PCP	246	96%
Weapon	Possession of a Firearm During a Crime of Violence (“PFCOV”)	263	96%

Table 3: Top Three Offenses with Lowest Compliant in the Box Rates

Offense Category	Offense	Number of Compliant in the Box Sentences	Compliant in the Box Rate
Weapon	Unlawful Possession of a Firearm, Prior Felony (“FIP-PF”)	470	78%
Weapon	Unlawful Possession of a Firearm, Prior Crime of Violence (“FIP-COV”)	91	84%
Property	Burglary II	392	87%

Data indicated that:

- Unlawful Possession of Liquid PCP, along with CPWL and PFCOV had the highest Compliant in the Box rates.
- Burglary II, along with FIP-PF and FIP-COV weapon offenses, had the lowest Compliant in the Box rates.
- The Guidelines’ overall Compliant in the Box rate of 90% was impacted negatively primarily by FIP-PF. The relatively low Compliant in the Box rate in FIP-PF sentences was due, in part, to the structure of a statutory mandatory minimum sentencing provision, where the Guidelines recommended sentencing ranges were more severe than the mandatory minimum for FIP-PF

offenders with a moderate CH score. The Commission recently addressed this issue and anticipates that compliance rates will increase for this specific offense.

Conclusion

The District's Guidelines were enacted to reduce disparities in sentencing practices by ensuring certainty, consistency, and adequacy of punishment, while allowing for discretion to address atypical offenders and cases. The overall Compliant in the Box rate was 90%, demonstrating a strong acceptance and adherence to the Guidelines. Further analysis indicated that Compliant in the Box rates were high across (a) Master vs. Drug Grids, as seen in Table 1 and (b) offense categories, shown in Figure 2. There was some variance among specific offenses, detailed in Tables 2 and 3. The overall high Compliant in the Box rates indicate that the Guidelines are used consistently by the Superior Court, which contributes to reduced disparity, increased fairness, and consistent sentencing within the District.

Appendix: Master and Drug Grids (July 2018)

Master Grid

	Severity Group (OSG) Most Common Offenses	Criminal History Score / Group				
		0 to ½ A	¾ to 1¼ B	2 to 3¾ C	4 to 5¾ D	6 + E
3 Points*	Group 1 1st degree murder w/armed 1st degree murder	360-720	360-720	360-720	360-720	360 +
	Group 2 2nd degree murder w/armed 2nd degree murder 1st degree sex abuse 1st degree sex abuse w/armed	144-288	156-300	168-312	180-324	192 +
	Group 3 Voluntary manslaughter w/armed 1st degree child sex abuse Carjacking while armed Assault with intent to kill w/armed Armed burglary I	90-180	102-192	114-204	126-216	138 +
	Group 4 Aggravated assault w/armed Voluntary manslaughter	48-120	60-132	72-144	84-156	96 +
	Group 5 Armed robbery Burglary I PFCOV Obstruction of justice Assault with intent to kill	36-84	48-96	60-108	72-120	84 +
2 Points*	Group 6 ADW Robbery Aggravated assault 2nd degree child sex abuse Assault with intent to rob FIP-COV	18-60	24-66	30-72	36-78	42 +
	Group 7 Burglary II 3rd degree sex abuse Negligent homicide Attempt 2nd degree sex abuse	12-36	18-42	24-48	30-54	36 +
1 Point*	Group 8 CPWL UUV Attempt robbery/burglary FIP-PF 1st degree theft Assault w/significant bodily injury	6-24	10-28	14-32	18-36	22 +
	Group 9 Escape/prison breach BRA Receiving stolen property Forgery/uttering Fraud	1-12	3-16	5-20	7-24	9 +

*Criminal History Points for prior convictions in these groups.
 White/unshaded boxes – prison or compliant long split only.
 Green shaded boxes – prison, compliant long split, or short split permissible.
 Yellow shaded boxes – prison, compliant long split, short split, or probation permissible.

Drug Grid

	Severity Group (OSG) Most common offenses	Criminal History Score / Group				
		0 to ½ A	¾ to 1¼ B	2 to 3¾ C	4 to 5¾ D	6 + E
2 Points*	Group 1 Distribution w/a (any drug) PWID w/a (any drug)	30-72	36-78	42-84	48-90	54+
	Group 2 Distribution or PWID (schedule I or II narcotic/ abusive drugs)	12-30	16-36	20-42	24-48	28+
1 Point*	Group 3 Distribution or PWID (except schedule I or II narcotic or abusive drugs) Attempt distribution or attempt PWID (schedule I or II narcotic/ abusive drugs) Possession of Liquid PCP	6-18	10-24	14-30	18-36	22+
	Group 4 Attempt distribution or attempt PWID (except schedule I or II narcotic or abusive drugs) Attempt possession of liquid PCP	3-12	5-16	7-20	9-24	11+

*Criminal History Points for prior convictions in these groups.
 White/unshaded boxes – prison or compliant long split only.
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