

## **CHAPTER I.**

### **ASSESSMENT OF DETERMINATE SENTENCING PRACTICES IN THE DISTRICT OF COUMBIA THROUGH JUNE 30, 2003**

Section 6 of the Advisory Commission on Sentencing Establishment Act of 1998, as amended by the Sentencing Reform Amendment Act of 2000, provides, in pertinent part:

“(d) ... The Commission shall continue to analyze the data specified in subsections (b) and (c) of this section and submit a final report of its findings in its 2003 annual report to the Council.”

D.C. Official Code § 3-105(d)(2001).

This chapter reports on the Commission’s study of sentencing practices for crimes committed after August 5, 2000. First, the section entitled “Criminal Sentencing Practice, 2001-June 2003” discusses the number and type of “new law” sentences for all offenses during the period August 5, 2000 through June 30, 2003. Next, in the section entitled “Trends in New Law Sentencing Practices,” the Commission assesses the trends in sentencing disposition under the new determinate sentencing system, for crimes committed after August 5, 2000. This includes comparisons of old law versus new law sentences. The discussion of trends finishes the job started in the Commission’s 2002 Annual Report, which reported on old law sentences and the “early returns” for new law sentences. The previous report was able to show trends only in drug sentences; this report describes sentences across all major crime types. These major crime types are broad groupings, corresponding to the 2002 Report categories, but do not correspond to the

offense groups the Commission has used to construct the structured sentencing system described in Chapters II and III.

### **Criminal Sentencing Practice, 2001 – June 2003**

To fulfill its obligation under the Sentencing Reform Amendment Act of 2000 to provide *detailed sentencing information to the Commission for all sentences imposed since August 5, 2000*, the Superior Court gave the Commission access to the Court Information System (CIS). The Commission has carefully reviewed and analyzed the Court's sentencing data. In addition, the Commission collected forms submitted by the judges for sentences imposed from October 2001 through December 2002. Although the Commission was charged with reporting on the "reasons for each sentence, including background and criminal history of the offender, the nature of the offense, and the impact of the offense on the victim or community," D.C. Code 3-105, the "reasons for each sentence" remain elusive. From the CIS and from additional data supplied by Superior Court judges, the Commission has collected a great deal of information on each sentence.<sup>1</sup> In the Commission's view, sentencing decisions are so complex and there are so many variables, including the philosophy of the sentencing judge, that it is impossible to explain sentences without getting into the head of the sentencing judge. We are not alone. Even the General Accounting Office in its recent comprehensive analysis of Federal sentencing practice noted that: "Empirical data on all factors that could influence

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<sup>1</sup> For all felony convictions the Commission received sentencing decisions, conviction charges, prior felony convictions in the Superior Court, selected background characteristics of offenders, whether the conviction was by trial or plea agreement, etc. For a sample of approximately 1,000 cases, the Commission collected information from judges on victim impact of crime, the criminal justice status of the offender at the time of the current offense, weapon use and type, etc.

sentencing were not available, and so an analysis that could fully explain why sentences varied was not possible.”<sup>2</sup>

The following section presents a statistical description of felony sentencing under determinate sentencing (“new law”) in the Superior Court. For the period August 2000 through June 2003, the most recent period for which data are available, the Superior Court provided CIS automated information on 4,418 new law cases with determinate sentences. This represents a substantial increase in the number of new law cases available for analysis, as the Commission was only able to report on 1,994 new law cases at the time of its last annual report in November 2002.

**Table 1-1. Number and Percentage of Type of Sentences Imposed on Felony Defendants Sentenced Under New Law, by Year**

Year	Total sentenced	Incarceration	Probation	Other
2001	1082	628 (58%)	452 (42%)	2 (.2%)
2002	1969	1259 (64%)	697 (35%)	13 (.7%)
2003(Jan. - Jun.)	1367	906 (66%)	450 (33%)	11 (.8%)
<b>Total</b>	<b>4418</b>	<b>2793</b>	<b>1599</b>	<b>26</b>

Table 1-1 describes the type of sentence offenders received by year of the sentencing for the 4,418 felony sentences in the Superior Court under the new law. Most sentences fall into one of three categories: 1) a sentence to prison; 2) a suspended prison sentence with a period of probation; or 3) a split sentence with a period of incarceration followed by probation.<sup>3</sup> The number of sentences that included some period of incarceration

<sup>2</sup> Federal Drug Offenses: Departures from Sentencing Guidelines and Mandatory Minimum Sentences, Fiscal Years 1999-2001. GAO-04-105 (October 2003), p. 4.

<sup>3</sup> Cases in which the judge imposed a “split sentence” are reported here as incarceration sentences. A split sentence is one in which the judge imposes a prison term, suspends part of that term, and places the defendant on probation thereafter. Under this type of sentence, the defendant serves the initial (not suspended) term of imprisonment and is then released on probation. If probation is later revoked, the

(including split sentences) increased steadily from 2001 to June 2003. In 2001, 58 percent were sentenced to some period of incarceration under the new law. This figure increased to 64 percent in 2002 and 66 percent during the first half of 2003. The probable explanation for this increase is that the more complex cases, more crimes of violence, and cases resolved by trial are just now beginning to appear in the database in significant numbers, and these cases are the crimes most likely to result in a prison sentence of some duration.<sup>4</sup>

Table 1-2 shows the trends in the distribution of types of crimes by major offense categories for new law cases.<sup>5</sup> The percentage of all offenses that were drug offenses was 40.2 percent in 2001, increased slightly to 43.5 percent in 2002 and increased again to 47.3 percent in the first half of 2003. The percentage of violent offenses also increased steadily during this time period, from 15.8 percent in 2001 to 16.6 percent in 2002 and

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defendant then serves the remaining (suspended) prison term. In the Commission's data, two types of split sentences are common: long split sentences and short split sentences. In a long split, the defendant serves a relatively lengthy initial term – say two, three or more years – before release on probation. Accordingly, these sentences are more like prison sentences followed by parole or supervised release, which is why they are included as incarceration cases in Table 1-1. In a short split, the defendant serves a brief period of incarceration – typically less than six months – before release on probation. These sentences are true hybrids – neither pure prison sentences nor pure probation sentences. Table 1-1 includes short splits with the incarceration sentences, but they could also be viewed, in a sense, as probation cases.

<sup>4</sup> In the 2002 Annual Report, the Commission observed that the 2002 *determinate* sentences were probably atypical, because the simplest cases tend to be disposed of most quickly, and *the most serious and complex cases were likely underrepresented as of June 2002*. For this report, there are a sufficient number of cases across violent crime categories and this limitation in the data is diminished if not eliminated.

<sup>5</sup> The offense categories are the ones utilized by the Bureau of Justice Statistics (BJS) in their numerous reports on sentencing and corrections. The Commission, with the assistance of the Urban Institute, classified approximately 140 Superior Court charges into these 6 categories. First, the 140 charges were categorized into 24 offense types. These 24 offenses were then collapsed into the 6 major offense categories. Violent crimes include crimes such as Murder, Manslaughter, Assault with Intent to Kill While Armed and Armed Robbery (Level 1); Assault with a Deadly Weapon and Possession of Firearm during Crime of Violence (Level 2); and Attempt Robbery (Level 3). Property crimes include Unauthorized Use of a Motor Vehicle, Second Degree Burglary, and Receiving Stolen Property. Distribution of Cocaine is the most common felony drug crime. Carrying a Pistol Without a License is the most common felony weapon offense. Most public order crimes involve absconding from a halfway house or other forms of custody. Other crimes include a category for “crimes not listed.”

20.2 percent in the first half of 2003. The increase in the proportion of violent crime sentences probably reflects, at least in part, the low number of new law violent crime sentences in 2001, perhaps because violent crime cases are often among the more complex, requiring more time to develop and come to disposition by trial or guilty plea. The 2003 numbers may reflect a more representative mix of offenses, as the more complex cases have had time to filter through the system.

**Table 1-2. Trends in Sentences Imposed on Felony Defendants Sentenced Under New Law, by Major Offense Category**

Year	Offense Category	Number	Percent by Year
2001	Violent	171	15.8
	Property	99	9.1
	Drug	435	40.2
	Weapon	68	6.3
	Public Order	278	25.7
	Other	31	2.9
	Total	1082	100.0
2002	Violent	326	16.6
	Property	188	9.5
	Drug	856	43.5
	Weapon	137	7.0
	Public Order	461	23.4
	Other	0	0.0
Total	1968	100.0	
2003 (Jan. - Jun.)	Violent	276	20.2
	Property	151	11.0
	Drug	647	47.3
	Weapon	79	5.8
	Public Order	165	12.1
	Other	49	3.6
	Total	1367	100.0

## Trends in Sentencing Practices, 1996 - 2003

Figure 1-1.

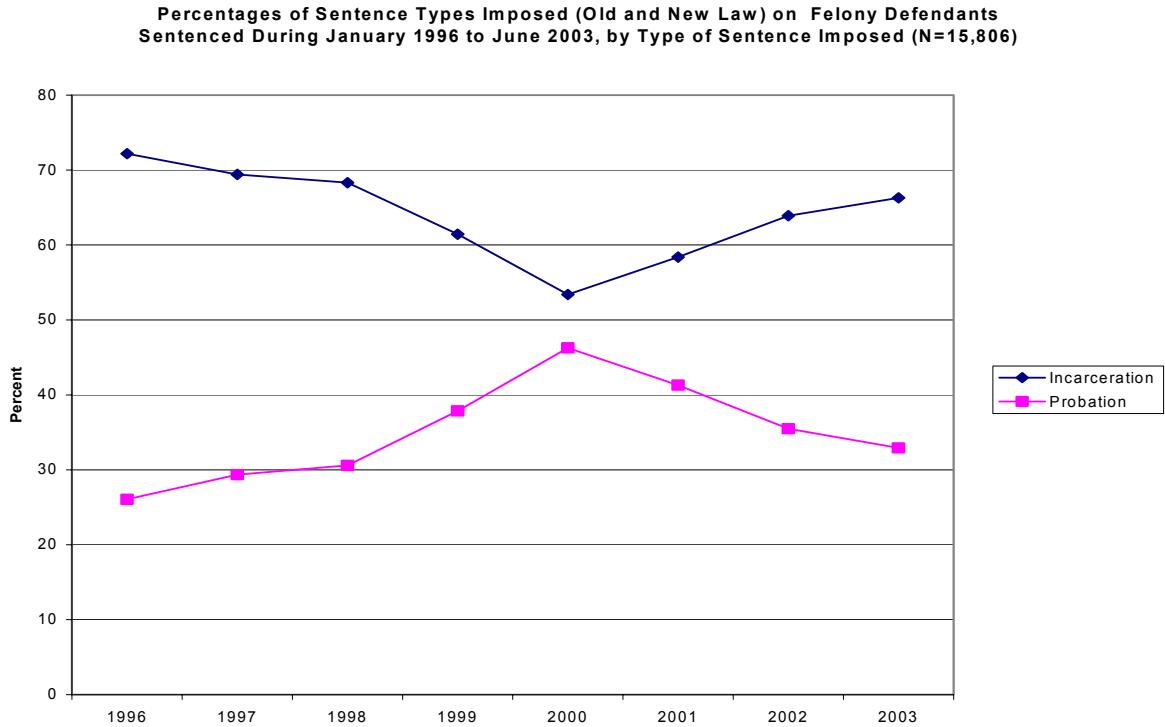


Figure 1-1 illustrates the percentage of dispositions for all (old and new law) sentences imposed from 1996 through June 2003. As discussed in the 2002 Report, the use of probation sentences grew in the late 1990s. However, it is now apparent that sentences to probation peaked in 2000 at 46.2 percent of all sentence dispositions.<sup>6</sup> For the first half of 2003, the proportion of all sentences that were sentences to probation had fallen back to 32.9 percent, close to the 1998 level of 30.6 percent. Conversely, by the first half of 2003, the percentage of incarceration sentences had risen to 66 percent, close to the level of 68.3 percent in 1998.

<sup>6</sup> The Commission cannot explain the fluctuation in probation cases. It cannot be accounted for by an unusually high number of drug cases in 2000, since drug cases continue to grow in 2002 and 2003, when probation returned to levels seen in 1998 and 1999.

### **Sentence Length, January 1996 – June 2003**

For those offenders receiving a sentence to a period of incarceration, the length of incarceration under the new and old law system is shown in Tables 1-3 to 1-9 by major offense type. The major offense types are Violent, Property, Drug, Weapon, Public Order, and Other. Violent offenses are divided into three categories. A Level I Violent Offense is the most serious and a Level III Violent Offense is the least serious.<sup>7</sup> For old law sentences, the judge gave a minimum and maximum sentence. The minimum sentence is used for the following tables since this is the point at which parole is first considered. Under determinate sentencing (new law), the offender receives one sentence and is required to serve at least 85 percent of that sentence.

As demonstrated in Table 1-3, the median sentence for Level I Violent crimes is 84 months for old law minimum sentences and 96 months for new law sentences. The median sentence for Level II violent crime is 24 months for old law minimum sentences and 36 months for new law sentences (Table 1-4). The median sentence for Level III violent offenses is 12 months for old law minimum sentences and 18 months for new law sentences (Table 1-5).

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<sup>7</sup> See note 4, supra.

Table 1-3. Felony Sentence in Months for Level 1 Violent Offenses (Short Splits Excluded); January 1, 1996 through June 30, 2003

Old vs. New Law	Offenders Sentenced	Mean	Standard Deviation	25th %tile	Median	75th %tile	Most Common
Old Law	1,130	143	114	60	84	180	60
New Law	299	181	696	60	96	180	60
Total	1,429	151	334	60	96	180	60

Table 1-4. Felony Sentence in Months for Level 2 Violent Offenses (Short Splits Excluded); January 1, 1996 through June 30, 2003

Old vs. New Law	Offenders Sentenced	Mean	Standard Deviation	25th %tile	Median	75th %tile	Most Common
Old Law	781	29	17	16	24	37	36
New Law	255	45	39	20	36	60	36
Total	1,036	33	26	18	30	40	36

Table 1-5. Felony Sentence in Months for Level 3 Violent Offenses (Short Splits Excluded); January 1, 1996 through June 30, 2003

Old vs. New Law	Offenders Sentenced	Mean	Standard Deviation	25th %tile	Median	75th %tile	Most Common
Old Law	252	13	9	8	12	15	12
New Law	100	17	9	11	18	24	24
Total	352	14	10	9	12	18	12

At first blush, it appears as though violent offenders in every level receive longer sentences under the new law than they did under the old law. However, it may not be accurate to say that the sentences are longer or that offenders are serving more time, since the data compare new law sentences to the minimum term, not the maximum term, of old law sentences. Under the old law, many offenders served more than their minimum



terms before their first release on parole. This was particularly true for those convicted of violent crimes. Thus, the comparison of new law sentences to old law minimum sentences may be viewed as a false comparison, but it is the best the Commission can do because reliable data on how long prisoners in fact served under old law indeterminate sentences are simply not available.

Table 1-6 describes the sentence length for property offenses for old law minimum and new law sentences. The median sentence for property offenses remains stable at 12 months for old law minimum and new law sentences.

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Table 1-6. Felony Sentence in Months for Property Offenses (Short Splits Excluded); January 1, 1996 through June 30, 2003

Old vs. New Law	Offenders Sentenced	Mean	Standard Deviation	25th %tile	Median	75th %tile	Most Common
Old Law	889	18	20	6	12	24	12
New Law	278	22	37	6	12	24	12
Total	1,167	20	25	6	12	24	12

Table 1-7 compares the sentence length for drug offenses in the two systems. The typical drug distribution crime in Superior Court is a small street-level sale, often committed by persons who themselves use drugs, not someone high up in a drug organization

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Table 1-7. Felony Sentence in Months for Drug Offenses (Short Splits Excluded); January 1, 1996 through June 30, 2003

Old vs. New Law	Offenders Sentenced	Mean	Standard Deviation	25th %tile	Median	75th %tile	Most Common
Old Law	1,535	19	17	8	12	24	12
New Law	1,020	18	19	6	12	24	12
Total	2,555	18	18	7	12	24	12

responsible for distributing large quantities of drugs. The median sentence for drug offenses under the new law is 12 months, the same as it was for old law minimum sentences.

Table 1-8 shows the sentence length for weapon possession offenses under new and old law sentencing. The median sentence for weapon offenses decreased by two months. The median old law minimum sentence for weapon crimes was 12 months; the median sentence for new law weapon crimes was ten months.

Table 1-8. Felony Sentence in Months for Weapon Offenses (Short Splits Excluded); January 1, 1996 through June 30, 2003

Old vs. New Law	Offenders Sentenced	Mean	Standard Deviation	25th %tile	Median	75th %tile	Most Common
Old Law	364	14	16	4	12	18	12
New Law	125	13	13	5	10	15	6
Total	489	13	15	4	12	18	12

Table 1-9 displays the sentence length for public order offenses for old law minimum and new law sentences. The median sentence for public order offenses increased from four months under the old law to six months under the new law.

Table 1-9. Felony Sentence in Months for Public Order Offenses (Short Splits Excluded); January 1, 1996 through June 30, 2003

Old vs. New Law	Offenders Sentenced	Mean	Standard Deviation	25th %tile	Median	75th %tile	Most Common
Old Law	1,413	5	4	3	4	6	4
New Law	577	10	10	3	6	12	6
Total	1,990	7	7	3	4	8	4

These findings have important implications for offenders sentenced to prison. Under the old law, judges could only control the minimum sentence. How long an offender served beyond the minimum sentence, up to the maximum sentence, less "good time" and other credits, was a decision made by paroling authorities. If these results continue, with new law sentences roughly equal to old law minimum sentences for non-violent crimes, then judges will be replicating that portion of past practice that they have always controlled. For violent crimes, on the other hand, new law sentences are longer than old law minimum sentences. In the past, judges may have expected that violent offenders would serve longer than the minimum sentence. Now, without a paroling authority to extend the length of stay by denying parole release to violent offenders, judges can control length of stay by sentencing violent offenders to longer terms of incarceration, and appear to be doing so.

