

EXECUTIVE SUMMARY

In 2012, the District of Columbia Sentencing and Criminal Code Revision Commission undertook a number of activities to expand its access to data and to improve the quality of that data, enabling the agency to better monitor and analyze sentencing trends in the District. In addition, several substantive changes were made to the D.C. Voluntary Sentencing Guidelines (“Guidelines”) to ensure that they continue to promote fair and consistent sentencing practices. Furthermore, 2012 was a transitional year for the Criminal Code Revision Project. The infusion of new resources enabled the Commission to hire a project director and staff to develop a plan that will guide a comprehensive revision of the District’s Criminal Code.

Data Collection Practices

In 2012, the Commission made two major changes to the manner in which data is collected. In collaboration with Court Services and Offender Supervision Agency (“CSOSA”), an electronic criminal history form was developed and implemented. This form enables CSOSA officers to directly input criminal history information and automatically calculate an offender’s criminal history score (“CH score”). This change reduces both data entry and mathematical errors previously encountered in determining an offender’s CH score. The Commission also developed a process by which missing CH scores were identified and researched. As a result, the Commission was able to confirm a defendant’s CH score in 99% of all felony counts sentenced in 2012.

During 2012, the Commission also improved its procedure for measuring judicial compliance with the Guidelines. A multi-level evaluation process was designed to examine non-compliant sentences; this evaluation included both a review of the Superior Court of the District of Columbia (“Superior Court”) court docket and an analysis of the sentence imposed to identify enhancements or any special sentencing provisions. This evaluation process enabled the Commission to identify sentences that initially appeared non-compliant but were actually compliant sentences. By utilizing this process, the 2012 judicial compliance rate increased to 98%.

Key Data Findings

In 2012, there were 2,260 felony cases and 3,384 felony counts sentenced, representing a decrease of 595 felony cases and 575 felony counts compared to 2011. Of the 2,260 felony cases, 1,821 were single count cases and 439 were multiple count cases. Ninety percent of all cases were disposed of through guilty pleas, which is consistent with previous years.

There were a total of 2,154 offenders sentenced last year, with 101 offenders sentenced in more than one case. Of the total number of offenders sentenced, 92.8% were Black, 89.9% were males, and 84.1% were Black males. The largest percentage of offenders (37.4%) was between 18 and 24 years old, with 31 representing the average age of offenders. Thirty six offenders between the ages of 15 and 17 were sentenced as adults, with 68% of those offenders receiving a prison sentence. Males were sentenced to prison more frequently for violent offenses, whereas females were sentenced more frequently to probation for drug offenses.

Prison was the most common sentence imposed, followed by probation, and then split sentences. A prison sentence was imposed in 50% of all cases and 62% of all counts. Prison sentences were imposed more frequently for non-drug offenses, while the rate of probation was highest for drug offenses. There was a slight decline in the overall incarceration rate, four percent by case and two percent by count when compared to 2011; this decrease is partially attributed to the 68% increase in attempted robbery cases, for which 47% of the cases received a term of probation as a result of the lower Offense Severity Group (“OSG”) ranking and the limited criminal history of the offenders. In addition, changes to the structure of the Drug Grid enacted in 2011 may explain the increase in probation sentences for lower level drug offenses.

Although drug offenses represented the highest percentage (32.5%) of all cases sentenced in 2012, this is a decline of eight percent from the previous year. Approximately 25% of all drug offenses involved cocaine, followed by phencyclidine (“PCP”), and heroin. Marijuana and “other” drugs accounted for the smallest percentage of drug cases. Prison sentences were imposed most frequently for drug cases involving heroin, and probation sentences were imposed most frequently for marijuana.

Guidelines Compliance

While judicial compliance with the Guidelines has consistently exceeded 85% since its inception, this year the overall compliance rate reached 98.8%, representing a historic high. Similar to the overall compliance rate, the percentage of in-the-box sentences, those sentences falling within the appropriate Guidelines sentencing type and range, increased from 95% in 2011 to 96% in 2012. These findings indicate that Superior Court judges are consistently applying the Guidelines and imposing felony sentences within the recommended Guidelines range. The increase in compliance rate is due to a combination of factors including: (1) the length of time the Guidelines have been in place; (2) modifications to the Guidelines to ensure that the recommended sentence is appropriate; and (3) improved data collection and validation practices.

Weapons offenses showed the highest rate (98%) of in-the-box compliance, while sex offenses had the lowest rate at 90.1%. With the exception of sex offenses, all offense groups demonstrated an in-the-box compliance rate of over 95%.

In 2012, there were 57 compliant departures reported, representing 1.7% of all sentences imposed. Drug offenses were more likely to receive a compliant departure, representing 38.7% of the total number of compliant departures. The increase in compliant departures for drug offenses was partially due to the structural changes to the Drug Grid that were implemented by the Commission in 2011. Non-compliant departure sentences were very limited, accounting for only 40 counts in 2012; violent offenses represented the highest number of non-compliant departures.

Guidelines Modifications

The Commission reviews and modifies the Guidelines on a continual basis in order to ensure the recommended Guidelines sentence is fair, just, and maintains public safety. During the past year, the Commission enacted four substantive policy changes: (1) a modification of the rule governing non-comparable out-of-District misdemeanor offenses to prevent the scoring of misdemeanors where the penalty was less than 90 days; (2) to conform to a recent Superior Court decision, the Guidelines now recognize the ability of a judge to suspend the imposition of sentence in non-Youth Rehabilitation Act cases, so long as the defendant is eligible for a probationary sentence; (3) an amendment to the Guidelines to clarify that if the Guidelines were applied to the defendant's initial sentence, they apply to a defendant following the revocation of his or her probation; and (4) adjust the way the Guidelines treat the Offenses Committed During Release ("OCDR") enhancement.

Criminal Code Revision Project

In 2007, the Council directed the Commission to undertake a comprehensive revision of the D.C. Criminal Code with the twin goals of ensuring consistency and clarity in the District's criminal laws and making their application more fair and efficient. To date, the project has submitted a limited set of code revisions, including the Fine Proportionality Act of 2011, which was enacted on January 23, 2013.

Since the project began, it has been significantly understaffed, and during the last fiscal year, the part-time project director retired. Thus, 2012 was a reorganizational year for the project. The Council provided funding for a full-time project director and for the four legal staff positions necessary to undertake a project of this complexity. All project related positions were filled by January 2013. Currently, the project director is developing a comprehensive Project Plan which will define the scope of the project, its deliverables and the project's timeline. The Project Plan will define and guide the work of the Code Revision Project during the coming year.