

## **EXECUTIVE SUMMARY**

In 2014, the District of Columbia Sentencing and Criminal Code Revision Commission continued to focus on improving data quality and data access, enabling the agency to more comprehensively monitor and analyze sentencing trends within the District. This enhanced analytical capability will enable the Commission to conduct a more detailed evaluation of the District of Columbia Voluntary Sentencing Guidelines (Guidelines), moving the Commission towards data driven policymaking. The activities of Criminal Code Revision Project (the Project) targeted developing recommendations for revisions to the property and drug offenses identified in the Project Management Plan. In addition, an “Agency Review” of the Project’s work to date was completed by the institutions represented on the Criminal Code Revision Committee during the fourth quarter of the year to identify concerns regarding the current code revision process.

### **Data Systems and Collection**

The Commission’s new Guideline Reporting Information Data (GRID) system was deployed and utilized as the agency’s primary data source during 2014. The GRID system significantly increases the quality, quantity, and reliability of the data used to analyze felony sentences and to calculate judicial compliance with the Sentencing Guidelines. Offense, conviction, and sentencing-related data from the Superior Court of the District of Columbia (Superior Court) and a defendant’s criminal history score, provided by the Court Services and Offender Supervision Agency (CSOSA), are electronically transferred into the system on a daily basis and merged to create a comprehensive sentencing database. The increased number of data variables available through the Court’s IJIS 12.1 data feed allow for expanded analysis of sentencing practices within the District.

In an effort to improve the accuracy and timely transmission of an offender’s criminal history score, the GRID system was enhanced during 2014 to include a new module – the Grid Scoring System (GSS). Through a bi-directional XML interface between the Commission and CSOSA, an offender’s criminal history score is transferred directly into the GRID system and judicial compliance is automatically calculated. GSS also has the capability to provide CSOSA with any changes made to a criminal history score at the time of sentencing, thus reducing errors in future criminal history score calculations.

With the implementation of both GRID and GSS, the Commission is able to undertake more in-depth monitoring and evaluation of the effectiveness of the Guidelines in order to ensure certainty and consistency in sentencing within the District.

## **Key Data Findings**

In 2014, the D.C. Superior Court sentenced 1,773 offenders in 1,921 felony cases that consisted of 2,844 individual felony counts. There has been a continuing decline in the number of felony cases sentenced from 2,813 in 2010 to 1,953 in 2013; however, it appears that the number of felony cases may have stabilized in 2014 (1,921) with a decline of only 32 cases. The notable 67% decline in the number of felony drug offenses sentenced from 2010 to 2014 has contributed significantly to the overall decline in both felony cases and counts. Of the 1,921 cases sentenced in 2014, the number of single (1,114) and multiple count (807) cases is consistent with cases sentenced in 2013. Drug, Homicide, Property and Weapon Offenses accounted for 67.5% of all multi-count cases. By far the largest number of felony sentences imposed are in Offense Severity Group (OSG) M8 and OSG D3, accounting for 42.2% of all felony sentences in 2014.

Prison remains the most frequent sentence type imposed, followed by probation and short split sentences. Of the felony counts sentenced in 2014, 69.1% resulted in prison sentences. Probation was imposed in 15.8% of all felony counts, with short split sentences imposed in the remaining 15.1% counts. During the past year, there was a 3% decline in the number of prison sentences imposed compared to 2013 and a 2.5% increase in the number of short split sentences. The percentage of probation sentences imposed remained relatively unchanged.

Offender demographics were similar to prior years with males representing 90.9% of offenders sentenced and females representing 9.1% of offenders sentenced. Despite the large difference in the gender of offenders sentenced, the data suggest that there are some offense types where male and female offenders share similar sentencing proportionality. For example, 21.1% of male offenders and 19.5% of female offenders were sentenced for Drug counts. This similarity also occurred for Homicide Offenses, which represented 3.9% of male and 3.0% of female offenders' sentences. However, female offenders were more likely to be sentenced for Voluntary Manslaughter, while male offenders were more likely to be sentenced for First Degree Murder and Second Degree Murder.

Drug offense sentences account for 21.0% of case level and 16.7% of count level felony sentences. This represents a very sharp decline in Drug sentences from the high point in 2010, when Drug sentences represented 39.0% of all felony sentences. Non-drug felony sentences represent the largest proportion of total felony sentences at both the case (79.0%) and count (83.3%) levels. Violent Offenses comprise the largest non-drug category at the case level (26.3%). Robbery was the most common offense within the Violent Offense category, accounting for 39.7% of cases. This marks a change from 2013, when the Weapons Offense category was the most frequent offense at both the case and count level. Consistent with 2013, Sex Offenses was the smallest category of non-drug felony offenses, representing only 1.7% at the case level and 2.1% at the count level.

Assault, Possession with Intent to Distribute and Distribution (PWID + Dist.), Robbery, Weapon and “Other” Offenses, accounted for over 71.7% of all felony sentences imposed in 2014. These top five grouped offenses represent a change from the previous four years in that the “Other” offense category has replaced the Attempted Drug Offenses. In 2014, the “Other” Offense category demonstrated the largest increase in percentage of counts sentenced, followed by the Assault and Robbery categories. The “Other” Offense category saw significant increases in sentences imposed for criminal street gang affiliation and prison breach, which are primarily escapes and failure to return to halfway house placements. These increases were accompanied by a large decline in the Weapons Offense category.

### **Guideline Compliance**

In 2014, the Guideline compliance rate for all felony sentences imposed was 97.4%, consistent with yearly compliance rates in excess of 90% since the inception of the Guidelines. This finding indicates that Superior Court judges are consistently applying the Guidelines and imposing felony sentences within the recommended Guideline structure. The increase 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 the recommended sentence is appropriate; and (3) improved data collection and compliance validation practices.

Compliant in-the-box sentences accounted for 84.3% of all sentences imposed, meaning that the sentence imposed was within the recommended range and sentence type. Compliant departures accounted for 4.4% of all sentences imposed during the year. In 2014, there was a decline in the number of compliant in-the-box sentences and a corresponding increase in the number of compliant departures when compared to 2013. This shift can partly be attributed to improved data quality that enables more comprehensive analysis of departures. Although compliant departures represent a small percentage of all sentences imposed, departures provide insight into why judges choose to impose a sentence other than the Guidelines recommended sentence for the typical offense for a particular combination of OSG and criminal history.

There were 11 aggravating (or upward) departures and 96 mitigating (or downward) departures. Aggravating factors represented 10.3% of departure reasons cited, while 89.7% of compliant departures cited mitigating factors. The Violent and Weapons Offense categories had the highest ratio of compliant departures from the Guidelines, whereas, Sex and Homicide Offense categories had the lowest ratio of compliant departures.

In 2014, non-compliant departures constituted 3.1% of all sentences for which compliance was calculated. A sentence is considered a non-compliant departure when the judge imposes an out-of-the-box sentence without citing a departure principle or other guideline factor, such as a

statutory enhancement. The data indicates that the Drug and Violent Offense categories accounted for the greatest proportion of all non-compliant sentences, although non-compliant departure sentences imposed for Property Offenses increased from 1.7% in 2013 to 3.8% in 2014.

### **Modifications to the Guidelines**

The Commission is required to include in its Annual Report any substantive changes it made to the Guidelines during the prior year. Last year, the Commission did not modify any of the Guidelines' recommended sentencing options or prison ranges contained in either the Master Grid or the Drug Grid. However, the Commission ranked one new offense and adopted two policy changes that altered the substance of the Guidelines.

The Guidelines classify crime of violence (COVs) differently than other offenses and in the past used a Guideline specific set of offenses listed as COVs that was different from the list of COVs contained in D.C. Code § 23-1331(4). The Commission determined that having a distinct list of COVs in the Guidelines was unnecessarily confusing, and that the Commission should defer to the statutory definition. The Commission removed its list of COVs from the Guidelines Manual and adopted D.C. Code § 23-1331(4) as the COV list to be used for Guideline purposes.

Prior to 2014, the Guidelines did not address whether a defendant's prior sealed conviction should be counted as part of his or her prior criminal history score. The Commission modified the rule to specify that a prior D.C. sealed or expunged conviction or adjudication is scored unless it was sealed or expunged on the ground of actual innocence. The revised rule also clarified how prior out-of-District sealed or expunged cases are scored, and provides that prior convictions with Imposition of Sentence Suspended should be counted in a defendant's criminal history score.

### **Criminal Code Revision Project**

During the first three quarters of 2014, the Criminal Code Revision Project focused on developing recommendations for the revision of the property and drug offenses specified in the approved Project Management Plan. The revision approach first sought to revise offenses in a manner that increases their clarity and consistency but reflects the current state of District law. Where the current state of District law (statutory or case law) is silent or ambiguous, the Criminal Code Revision Committee (CCRC) agreed to negotiate new language for clarifying and making offenses more consistent, including specifying mental state elements that are unclear in current law. The CCRC agreed to make new, substantive changes to the law only where there is unanimous agreement among the CCRC members.

After developing draft revisions for property offenses over the past year, the CCRC's criminal justice members expressed a desire to conduct a more in-depth, cumulative review of all Project work to date within their respective institutions. The primary goal of the "Agency Review" was to identify any concerns regarding the Committee's current process of code revision. A secondary goal was to illicit agency comments on specific draft revisions. A set of agency review materials including the general provisions, a reorganization scheme for Title 22, and revised property offenses was prepared and released to the CCRC on August 4, 2014. The recommended revisions to drug offenses have not undergone an Agency Review to date.

The result of the Agency Review revealed a notable lack of consensus on the appropriate scope and nature of the Project among the major criminal justice agencies. In order to move the Project forward, the Commission decided to modify the Project Management Plan to focus on select code revision activities, such as the enactment of Title 22, for which consensus can be more readily achieved among Committee members. A revised Project Management Plan, approved by the Commission on March 17, 2015, is included in this report.