

EXECUTIVE SUMMARY

In 2015, the District of Columbia Sentencing and Criminal Code Revision Commission (the Commission) continued to focus on improving data quality and data access, enhancing the agency's capacity to monitor and analyze sentencing trends within the District. The Commission's advanced analytical capability allows for a more detailed evaluation of the Sentencing Guidelines and enables data-driven policymaking. Although the number of felony cases sentenced in the Superior Court continues to decline, compliance with the Guidelines remains over 95%, indicating their wide acceptance among prosecutors, defense counsel, and the judiciary. In September 2015, the Criminal Code Revision Project (CCRP) delivered to the Council and the Mayor, a package of proposed code revisions entitled "Enactment Plus," which included recommendations for enactment of Title 22 and identification of unconstitutional, common law, obsolete, and outdated statutory provisions.

Data Systems and Collection

The Commission's Guideline Reporting Information Data (GRID) System, which serves as the agency's primary data system, was enhanced in 2015 with the implementation of the Grid Scoring System (GSS). The Commission, with assistance and collaboration from the Court Services and Offender Supervision Agency (CSOSA), developed GSS to allow both agencies to improve sharing of sentencing data in a secure and timely manner. CSOSA users directly input offenders' prior criminal history information into GSS, which then automatically applies Guidelines scoring rules to calculate each offender's total criminal history score (CH score) for the user and electronically transfers the information into the GRID System. This enhancement improves both the quality and timeliness of criminal history scores received by the Commission. Due to the successful implementation of GSS, the Commission received every expected CH score calculation from CSOSA in 2015.

The Commission also upgraded the GRID System to allow for yearly "snapshots" of historical case data. Preserving a "snapshot" of historical case data for each calendar year allows the Commission to make year-to-year comparisons of sentencing practices and trends. On January 1 of each year, the GRID System now preserves a "snapshot" of the data for the previous calendar year. Given that felony cases in the GRID System are updated continually by the court, it is important to preserve a yearly "snapshot" for an accurate comparison and analysis of sentencing data and trends. The "snapshot" provides a major expansion of the Commission's analytical capabilities.

With these enhancements to the GRID System, the Commission is able to undertake more in-depth monitoring and evaluation of the effectiveness of the Sentencing Guidelines in ensuring certainty and consistency in sentencing within the District.

Key Data Findings

In 2015, the D.C. Superior Court sentenced 1,617 offenders in 1,701 felony cases, consisting of 2,309 individual felony counts. This represents a decline of 534 (19%) felony counts from 2014 and 1,356 (37%) felony counts since 2010. The notable 75% decline in the number of felony drug offenses sentenced from 2010 to 2015 contributes significantly to the overall decline in both felony cases and counts. Of the 1,701 cases sentenced in 2015, the numbers of single (990) and multiple (711) count cases are consistent with cases sentenced in previous years. Sex, Violent, Weapon and Other Offenses accounted for 42% of all multi-count cases. By far the largest number of felony sentences imposed are for offenses in Offense Severity Group (OSG) M8 and OSG D3, accounting for 43% of all felony sentences in 2015.

Prison remains the most frequent sentence type imposed, followed by probation and short split sentences. From 2010 through 2014, prison sentences ranged between 65% and 68% of all felony sentences imposed; in 2015, the percentage of cases sentenced to prison decreased to 55%. Probation was imposed in 25.6% of all felony cases, with short split sentences imposed in the remaining 19.5% cases. The proportion of cases sentenced to probation ranged between 17% and 20% from 2010 through 2014, increasing to nearly 26% in 2015. Short split sentences also reached their largest proportion of sentences in 2015, increasing from a range of 12% to 16% of sentences between 2010 and 2014 to more than 19% in 2015.

Offender demographics remain consistent with previous years, with males representing 91.7% of offenders sentenced and females 7.8%. Despite the large difference in the gender of offenders sentenced, the data show that there are some offense types where male and female offenders share similar sentencing proportionality. For example, 25.8% of both males and females were sentenced for Violent offenses. However, even though the proportions of males and females sentenced for Violent offenses were identical, females received prison sentences at a significantly lower rate, with 3.2% of females receiving a prison sentence, compared to 62.0% of males for Violent offenses.

The number of offenders in age groups 18 to 21 and 22 to 30 accounted for more than 63% of all offenders sentenced in 2015. The proportion of offenders age 18 to 21 has increased markedly from 20% of sentences in 2010 to 32% of sentences in 2015. The percentage of 15 to 17 year old offenders sentenced as adults has consistently remained between 2% and 3% of all cases. Only 1% of felony cases involved offenders over the age of 60, which is reflective of the percentage of offenders sentenced in this age group in both 2013 and 2014.

In 2015, the average age across offense types ranged from 24 to 36 years of age, while the median age ranged from 20 to 34 years of age. Offenders sentenced in Homicide, Violent, and

Weapon offense categories tended to be younger offenders. Those sentenced in Drug, Other Offenses, and Sex offense categories were slightly older offenders. The age of offenders sentenced for Property offenses showed the greatest variability.

In 2015, drug offenses represented 19% of case level and 16% of count level felonies sentenced. Drug offenses also experienced the largest decline from 1,497 counts sentenced in 2010 to 375 counts in 2015, representing a 75% decrease. Possession with intent to distribute a controlled substance or attempted possession with intent to distribute a controlled substance account for more than half of the drug offenses (53%), while distribution or attempted distribution of a controlled substance represents 28% of drug offenses. Possession or attempted possession of liquid PCP accounted for 20% of all drug offenses sentenced in 2015.

Non-drug felony sentences represent the largest proportion of total felony sentences at both the case (81%) and count (84%) levels. Violent offenses comprise the largest non-drug category at the case level (26%). Robbery was the most common offense within the Violent category in 2015, accounting for 35% of cases in this category and 20% of all felony cases. This finding is similar to 2014 where robbery accounted for 40% of all Violent cases. Homicide was the least frequent offense category, representing 3% of the sentences at both the case and count level in 2015. This finding represents a change from previous years, when Sex offenses represented the smallest category of felonies sentenced. In 2015, Sex offenses represented 4% of cases and counts.

Guideline Compliance

In 2015, 95.5% of all counts sentenced were compliant with the Voluntary Sentencing Guidelines (the Guidelines). This percentage is consistent with yearly compliance rates in excess of 90% since the inception of the Guidelines. However, Guidelines compliance in 2015 was slightly lower than the 96.5% reported in 2014. This finding indicates that Superior Court judges consistently apply the Guidelines and impose felony sentences within the recommended Guideline structure. The high compliance rate is attributable 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 86.5% of all sentences imposed, meaning that the sentence imposed was within the Guidelines recommended range and sentence type. The percentage of compliant-in-the-box sentences has remained relatively stable over the previous five years. In addition, there was a 1.0% increase in the number of non-compliant sentences from 2014 (3.5%) to 2015 (4.5%). However, the percentage on non-compliant sentences is still significantly below the 2011 (8.0%) and 2012 (6.7%) levels.

Compliant departures occurred in 2.9% (68 counts) of all felony counts sentenced in 2015, where the sentencing judge departed using one of the Guidelines departure factors. Of the total compliant departures reported, 52 were durational departures from the Guidelines sentencing range (i.e., a sentence above or below the recommended sentencing range) and 16 were dispositional departures from the Guidelines eligible sentence type (e.g., a probation sentence in a prison only box). Although these departures constituted a small percentage of all sentences, they offer insight into the reasons judges may choose to impose a sentence outside of the Guidelines grid boxes in particular cases. The overall trend for compliant departures has shown a relative decline in the percentage of compliant departures for Drug offenses, and increased compliant departures for Weapon and Violent offenses.

In 2015, there were 86 non-compliant departures representing 4.5% of felony counts sentenced, an increase from 3.5% in 2014, but a decrease from 8% in 2011. Weapon and Drug offenses comprised the majority of non-compliant departure sentences imposed. The proportion of offense types receiving non-compliant departures changed between 2014 and 2015. In 2015, Weapon Offenses (33.7%) represented the largest proportion of non-compliant sentences, an increase of 10.0% from 2014. This increase was related to an increase in the number of non-compliant sentences for assault with a dangerous weapon and unlawful possession of a firearm with a prior conviction. Of the 86 non-compliant departures, 62 were durational departures and 24 represented dispositional departures.

Modifications to the Guidelines

The Commission is required to include in its Annual Report any substantive changes it made to the Guidelines during the previous 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 did adopt one major substantive policy change necessitated by changes to the District's marijuana laws.

Since their inception, the Guidelines have provided that prior convictions or juvenile adjudications for conduct that was later de-criminalized are not counted when calculating a defendant's CH score. Following marijuana decriminalization/legalization in the District, possessing, growing, and sharing of limited amounts of marijuana became legal, but possessing, sharing, and growing large amounts of marijuana, along with PWID and distribution for remuneration remained illegal. However, based upon prior conviction records, it is usually impossible to determine if an offender's prior conviction was for behavior that was legalized (possessing, growing, or sharing a small amount of marijuana) or behavior that remains illegal (possession or sharing a large amount of marijuana or selling marijuana).

To clarify which prior marijuana convictions should and should not be scored, the Commission developed a new rule for determining when a prior marijuana conviction should and should not be scored and for assigning the burden to the party responsible for providing information to the court when challenging the scoring of a prior marijuana conviction.

Criminal Code Revision Project

In March, the Commission updated the CCRP Plan to prioritize code revision activities in areas where Commission member agreement was the strongest. The Commission then focused on developing code revision recommendations, collectively labeled as “Enactment Plus,” which included recommendations for enactment of Title 22 and identification of unconstitutional, common law, obsolete, and outdated statutory provisions.

In September, the Commission reviewed and approved the Report on Enactment of D.C. Code Title 22 and Other Code Revisions and accompanying appendices, which was submitted to the Council and the Mayor on September 30, 2015. The report included draft legislation in the Appendices, which could be used to implement the Commission’s recommendations.