

*District of Columbia
Sentencing Commission*



- 2005 Annual Report -

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November 30, 2005

The Honorable Linda W. Cropp
Chairman
Council of the District of Columbia
1350 Pennsylvania Ave., N.W.
Washington, DC 20004

Re:
Annual Report to the Council of the District of Columbia

Dear Chairman Cropp:

Pursuant to section 5(c) of the Advisory Commission on Sentencing Establishment Act of 1998, the Commission submits its 2005 Annual Report to the Council. This report discusses the Commission's activities during fiscal year 2005.

Respectfully submitted,

Frederick H. Weisberg, Chairman

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In June 2004, as directed by statute, the District of Columbia Sentencing Commission began to assist the Superior Court in implementing voluntary sentencing guidelines on a pilot basis. When the pilot program ends in November 2006, the Commission will submit a report to the Council that assesses whether the sentencing guidelines system is achieving its objectives of promoting fair and consistent sentences while reducing unwarranted disparity. In the chapters that follow, the Commission reports on the early progress of the pilot program after more than one year of operation.

Chapter I discusses guidelines implementation and monitoring, and highlights some of the public feedback regarding the guidelines. To help ensure consistency, Commission staff offers technical assistance and training to criminal justice personnel who apply the guidelines. The staff also develops and revises written materials to improve the interpretation of the guidelines. To monitor these changes, staff trouble-shoots guideline reporting and monitors actual sentencing to gather and analyze as much data as possible before the end of the pilot program. Regarding feedback, judges and attorneys have noted positive effects (reducing disparity, increasing sentencing predictability, facilitating plea bargaining, reducing case disposition time) that appear to be related to the guidelines and have also made suggestions for improvement. Over time, the Commission can use this and other information to determine if any changes to the existing system are warranted.

Chapter II reports some preliminary findings on judicial compliance with the sentencing guidelines. Although a detailed review of most offense categories cannot be conducted for at least one more year, the Commission is able to report some encouraging data. The preliminary evidence suggests that guidelines are having their intended effect of reducing unexplained variability in sentences, at least for drug crime sentences. Furthermore, compliance rates are high, with 90 percent of the sentences within the applicable sentencing options and guideline range.

Chapter III highlights some of the broader trends following the transition from indeterminate sentencing to determinate sentencing in 2000. This Chapter provides information on more than 10,000 “new law” cases between January 2001 and September 2005. The analysis indicates that the incarceration rate for felony offenders increased from 2001 (58 percent) to 2004 (79 percent), and remains high in 2005 (77 percent). Importantly, the incarceration rate increase has been accompanied by shorter periods of imprisonment. The proportion of sentences below 36 months has increased, while sentences above 36 months have decreased.

Finally, in Chapter IV, the Commission lays out some of its ongoing activities for the coming year and beyond. Sentencing commissions throughout the country can serve numerous functions as adjuncts to legislatures, courts and executive branch agencies. This Chapter briefly highlights several possible functions for the D.C. Sentencing Commission, including making impact assessments for sentencing changes and providing sentencing information to the public.

Background and Introduction

The mission of the District of Columbia Sentencing Commission is to implement, monitor, and support the District's voluntary sentencing guidelines, to promote fair and consistent sentencing policies, to increase public understanding of sentencing policies and practices, and to evaluate the effectiveness of the guidelines system in order to recommend changes based on actual sentencing and corrections practice and research.



The “Advisory Commission on Sentencing Structured Sentencing System Pilot Program Amendment Act of 2004,” D.C. Official Code § 3-105(e) (2005 Supp.), directs the District of Columbia Sentencing Commission (the Commission) to assist the Superior Court in implementing voluntary sentencing guidelines on a pilot basis. The pilot program went into effect on June 14, 2004, for all felony guilty pleas and verdicts entered on or after that date. Because the guidelines are voluntary, judges are encouraged, but not required, to follow them. When the pilot program ends in November 2006, the Commission will submit a report to the Council that assesses whether the sentencing guidelines system is achieving its objectives of promoting fair and consistent sentences while reducing unwarranted disparity.

The guidelines cover both the judge’s decision to incarcerate or not in a given case - the so-called in/out decision - and, if the judge decides to incarcerate, the length of the prison term to impose, expressed in a recommended range. Generally speaking, offenders convicted of more serious offenses are not recommended for probation and have longer sentence recommendations, as do offenders with more serious criminal histories. In constructing the guidelines, the Commission’s intention was to move most future sentences for “typical” cases into these recommended sentence options and prison term ranges, thus eliminating at least some unwarranted variation in sentences for similar crimes. Also, the Commission anticipates that the guidelines will give judges, practitioners, defendants, crime victims and the community at large a better

understanding of the likely consequences of criminal behavior and confidence that sentences will be more predictable and consistent.

The guideline recommendations were developed to provide guidance for the typical case, taking into account offense severity and criminal history; but there are other extraordinary cases, where the recommended guideline sentence would not serve the ends of justice. For these cases, the Commission developed a non-exclusive list of aggravating and mitigating factors. If the judge finds one of these reasons to be substantial and compelling in a given case, the judge is not bound by the guideline options and ranges, but must state on the record the aggravating or mitigating factor that explains why he or she is sentencing outside of the suggested option or range. Because the guidelines are voluntary, a judge may also opt to give a non-compliant sentence, which is a sentence that is not within the range but where the judge does not articulate one of the listed aggravating or mitigating factors as the reason for the departure¹.

In the chapters that follow, the Commission reports on the progress of the pilot program after a little more than one year of experience with voluntary guidelines. Chapter I discusses the guidelines implementation and monitoring process, and highlights some of the public feedback regarding the guidelines. Chapter II reports some preliminary findings on guideline compliance. Although a detailed review of most offense categories cannot be conducted for at least another year, Chapter III highlights some of the broader trends since determinate sentencing went into effect in 2000. Finally, in Chapter IV, the Commission lays out some of its ongoing activities for the coming year and beyond.

¹ For a more detailed description of the guidelines and their development, please see the 2003 Annual Report and the 2005 Sentencing Guidelines Practice Manual, both of which may be found on the Commission's website at <http://sentencing.dc.gov>.

The pilot sentencing guidelines² have substantially changed the business process for numerous actors in the criminal justice system. For the Commission, the advent of sentencing guidelines meant a transition from an advisory group mainly researching policy alternatives, to an agency actively implementing and monitoring a guidelines system along with its other continuing functions. For the Court Services and Offender Supervision Agency (CSOSA) and the Superior Court (judges, clerks, court staff), the guidelines have added additional tasks and substantially changed some elements of on-going practice. For prosecutors and defense attorneys, the guidelines have transformed the plea bargaining process and have made it incumbent on lawyers on both sides to understand how the guidelines will affect the sentencing decision upon conviction. Although it is still too early to make substantive policy recommendations, this chapter discusses the efforts of the Commission and others to implement and monitor the pilot sentencing guidelines, and make improvements as the need arises. Later in this chapter, some preliminary feedback from practitioners is discussed.

² “The Commission shall assist the Superior Court of the District of Columbia in implementing, as a pilot program, the comprehensive structured sentencing system that was recommended by the Commission pursuant to subsection (d) of this section. No later than December 1, 2006, the Commission shall submit to the Council its final recommendation on the comprehensive structured sentencing system.” D.C. Official Code § 3-105(e)(2005 Supp.).

Implementation of the Sentencing Guidelines

As discussed in past annual reports, it is critical that the sentencing guidelines be interpreted and applied correctly and consistently by CSOSA officers and judges, prosecutors, and defense attorneys, who use the guidelines on a daily basis. Consistent application of the guidelines is necessary to achieve the goal of fairness by producing similar sentences for similarly situated offenders. To this end, the Commission continues to provide technical assistance to criminal justice professionals and the general public regarding the correct application of the sentencing guidelines.

To date, the Commission's staff attorney has responded to more than five hundred inquiries concerning the application of the guidelines in particular cases³. Though roughly ninety percent of the inquiries come from CSOSA officers, who initially calculate the applicable guideline recommendation in the presentence report, the Commission also receives requests for assistance from Superior Court judges, law clerks, defense attorneys, defendants and their family members, students of law and criminal justice, and other interested citizens. While some of the questions are straightforward, others are more technical and require more research or analysis.

The majority of the inquiries (approximately 55 percent) pertain to how to "score" prior convictions from other jurisdictions in order to calculate the defendant's criminal history score. This is an important and recurring issue in the District given its proximity to Virginia and Maryland. It is not uncommon for defendants charged in Superior Court to have prior criminal convictions in Maryland or Virginia. While the majority of inquiries regarding prior out-of-state convictions relate to those two states, the Commission has also received questions about convictions from more than twenty-five other states. The Commission keeps detailed records of each inquiry and the Commission's response.

In addition to offering technical assistance, the Commission has performed numerous other tasks to assure correct application of the guidelines. For instance the

³ At the time of the 2004 Annual report, the Commission had received 162 sentencing guideline inquiries.

Commission's staff and several Commission members recently collaborated on the June 2005 edition of the Sentencing Guidelines Practice Manual. This revised version includes more than forty changes to account for factual and legal scenarios that were not addressed or not adequately addressed in the first edition of the Manual (2004). To cite one example, the 2005 Manual includes new rules for scoring prior out-of-state convictions. This issue proved to be far more complex than anticipated, and the new legal rules were the result of many hours of legal research and issue-spotting by Commission staff and frequent dialogue and negotiation among Commission members. Even though the new rules are intended to be less complex so as to promote consistency, it is expected that the criminal justice community will continue to contact the Commission for assistance in scoring prior out-of-state convictions.⁴

As part of the effort to match out-of-state convictions as closely as possible with their District of Columbia counterparts, the Commission has recently completed a crosswalk between one hundred of the most common Maryland offenses and the closest comparable District of Columbia offenses. We expect that this report will make it easier for the criminal justice community to score prior Maryland convictions pursuant to the new rules and will improve consistency. The Commission is now developing a similar report for the most common Virginia offenses and may thereafter develop similar guides for other states, depending on the frequency with which convictions from these states appear in the criminal histories of Superior Court defendants.

In addition to the activities described above, the Commission intends to continue to provide technical training to the Court, CSOSA, and any other requesting agencies to assure accurate and consistent application of the sentencing guidelines. It is expected that the Commission will revise the Practice Manual each year to reflect necessary policy additions and changes. To that end, the staff has already begun to gather materials for inclusion in the 2006 Manual. These suggested revisions generally originate from specific sentencing inquiries made by CSOSA officers, attorneys, Superior Court staff, or others. The Commission also expects that the sentencing

⁴ Changes in the scoring of out-of-state convictions are just one of many issues that prompted revisions in the 2005 Practice Manual. In an effort to limit technical information, this Annual Report does not include detailed information on all legal and technical issues that have been addressed during the year. The Commission would be pleased to provide the Council with more specific information upon request.

guidelines themselves may need revision in the future to accommodate developments in case law or any new criminal legislation enacted by the Council.

One major goal of the sentencing guidelines is to increase uniformity and fairness, while allowing for individualized sentences in appropriate cases, which in turn increases public confidence in the legitimacy of the criminal justice system in general and criminal sentencing in particular. Consistent with this objective, the Commission has placed heavy emphasis on the importance of accurate and consistent application of the guidelines. While much has been accomplished this past year, many additional tasks remain to assure that the sentencing guidelines adapt to the constantly changing criminal justice landscape.

Monitoring of Sentencing under the Guidelines

The voluntary guidelines have been implemented as a two-year pilot program to provide the Commission and the criminal justice community an adequate opportunity to assess them before moving to any more permanent system. Although the Commission carefully analyzed past sentencing practice in the District of Columbia and around the country before recommending a structured sentencing system, the guidelines represent an entirely new direction in sentencing and can only be evaluated as they play out in actual practice. To maximize the usefulness of the pilot testing period, it is critical that the system be able to generate timely guideline recommendations for the parties and the sentencing judge in each case. It is also critical that the guideline recommendation and the ultimate sentence imposed be reported timely and accurately to the Commission in order to monitor compliance with the guidelines. Currently, Commission staff trouble-shoot guideline reporting and monitor actual sentencing under the guidelines in order to gather and analyze as much data as possible before the end of the pilot program. Over time, the Commission can use this and other information to determine if any changes need to be made to the existing system, which may include different ranking of certain offenses, adjustments in ranges or options, or new criminal history scoring rules.

Working closely with CSOSA and Superior Court, Commission analysts created the Sentencing Guideline Form (SGF) to report relevant information in one standardized

format. The SGF captures offense information, offender demographic information, and the criminal history score of each convicted defendant, as well as the guideline recommendation and a record of the actual sentence imposed, including whether or not the judge followed the applicable guideline or departed. In the case of departures, the SGF should include the judge's stated reasons for departing, and the Commission staff follows up with the judge if it does not.

Currently, the business process begins with a judge requesting a presentence report (PSR) from CSOSA after a guilty plea or verdict is entered in a felony case. CSOSA officers currently have seven weeks to complete the PSR, which includes the guideline recommendation in addition to the other information relevant to sentencing. The guideline recommendation is based on the severity of the current offense and the defendant's criminal history score⁵. CSOSA transmits the PSR to the judge and separately transmits the SGF with the applicable guidelines recommendation to the judge and to the Commission. After sentencing, the Superior Court's staff adds the actual sentence information to the SGF and forwards it to the Commission for analysis.

Currently, the SGF is manually completed by CSOSA and Court staff and transmitted to the relevant parties in the case. This process has proven to be administratively burdensome, because of both the manual nature of the task and the need for multiple actors from different agencies to contribute separate data, including the Commission, which must manually enter all of the completed SGFs into a database for analysis and identify and track down any missing SGFs. Despite the best efforts of all parties, the manual process is time-consuming and is vulnerable to transcription errors and other inaccurate or incomplete information. As a result, Commission staff must dedicate time to searching court records, either in hard copy form or on the Court's computer system. Staff must also contact judges to follow up on apparent departures when the SGF is missing a departure reason.

The Commission, CSOSA, and the Court all recognize the limitations of this manual process and are working to improve it. Notwithstanding these problems, the Commission has received the required information in a high proportion of cases, and

⁵ The criminal history score is developed based on the number and severity of the offender's prior convictions.

anticipates that moving to an automated guideline reporting process will eliminate many of these errors. In addition, under automation, analysts will be able to conduct more in-depth research on issues of concern to the Commission.

The 2004 Report highlighted the development of a secure, interactive web-based computer environment to automate all sentencing reports, the Sentencing Guidelines Web (SGW)⁶. The SGW will provide judges and attorneys with the applicable guideline recommendation for each case, and it will allow users to complete guideline forms online in a secure environment. It will facilitate compliance with guidelines and with the other business rules involved in the introduction of the new guidelines system to sentencing in the Superior Court. The SGW will also improve efficiency by providing error checks on some portions of the data. Once the SGW has captured all pertinent information, users can electronically submit this information to the Commission, which can then download the information for immediate analysis. Moreover, once the criminal history and other information for a particular defendant is entered, it is saved and need not be reentered if that same person is later arrested and charged with a felony.

As noted in the 2004 report, the Commission developed the SGW because it will significantly enhance the ability to share critical information at key decision points, which is essential to rational and effective sentencing and corrections policy. The Commission is promoting secure sharing of information with its partners, the Superior Court and CSOSA, using the JUSTIS platform developed by the Office of the Deputy Mayor for Public Safety and the Criminal Justice Coordinating Council. Eventually, the Commission's web-based solution has a goal of full automation, with all relevant guidelines information being drawn directly from its initial source (eliminating the need for any manual entry of duplicative information to construct a SGF), and the development of a more complete database of case information to monitor the sentencing guidelines.

⁶ The Commission wishes to thank DC Justice Grants Administration for partial funding of this project through a federal Byrne grant, subgrant number 03-DE-09. With financial assistance from the Superior Court, the Commission has also developed a stand-alone module to the SGW, which will enable permitted users to calculate guideline recommendations based on hypothetical scenarios. This user friendly enhancement of the SGW should help to demystify the guidelines and make them accessible and understandable to a much broader segment of the criminal justice community.

Because of enhancements on the original design and a variety of technical issues, we have been forced to collect data manually longer than originally anticipated⁷. At the present time, the Commission staff has completed testing of the SGW and anticipates a go live date in the very near future.

Over the past year, the Commission, Superior Court and CSOSA have worked diligently to ensure that the monitoring process is running as smoothly and seamlessly as possible. The Commission must make every effort to obtain complete and timely sentencing information, so that it can assess the pilot program and recommend improvements to the system. Periodically, staff conducts audits to identify and locate missing or incomplete cases. The Commission will soon move to partial automation with a plan to develop a fully automated system as soon as practicable.

Preliminary Feedback from Practitioners

Throughout implementation and monitoring, the Commission has recognized the value of feedback from practitioners in an effort to identify problems or issues practitioners have encountered in their experience working with the guidelines. As noted above, the Commission's staff attorney addresses guideline inquiries from criminal justice personnel, and he and other Commission staff interact regularly with other actors involved in the implementation and monitoring process. Additionally, the Commission has held a judicial focus group and plans to conduct more focus groups or user surveys in the future.

The participants in the judicial focus group offered primarily positive feedback regarding the pilot sentencing guidelines. In particular, the judges praised the guidelines' apparent success in narrowing judicial sentencing discretion (thereby reducing inter-judge disparity), while still allowing flexibility to fashion appropriate

⁷ The major design change is a direct interface to the CSOSA SMART system, the source of the guidelines criminal history information. The interface provides major advantages in efficiency and accuracy, but has delayed automation. The Commission is indebted to CSOSA for funding this enhancement. The development of a security solution for the JUSTIS platform, under the supervision and funding of the Criminal Justice Coordinating Council, has caused some additional delay. Finally, the Superior Court's conversion to a new criminal database has introduced the need for further enhancements before full automation can be achieved.

individualized sentences⁸. The judges also agreed that the guidelines have helped provide defendants, defense attorneys, prosecutors, and other parties with a clearer idea of the defendant’s probable sentencing exposure when negotiating plea agreements. According to the judges, these benefits of predictability are particularly important in drug cases, where the statutory sentencing range is quite wide (thirty years) but most sentences tend to cluster in a much narrower range, which is reflected in the guideline recommendations.

Because the guidelines provide the defendant with an idea of the likely range of the sentence and improve the defense attorney’s ability to advise the defendant, it is widely assumed that the time between arrest and disposition will be reduced. More efficient case processing should yield savings in correctional and other costs⁹. Defense attorneys and prosecutors are reporting that the voluntary sentencing guidelines have improved the plea bargaining process, allowing parties to see more clearly how pleading to one charge as opposed to another affects the guideline recommendations and options. While the evidence is anecdotal at this point, greater predictability appears to lead to faster case resolution by making it easier for prosecutors to formulate plea offers and for defense counsel to explain to their clients the benefits and risks of the plea offer. Similarly, it is easier under the guidelines to see the possible impact of enhancements, thus giving more meaning to statutorily-enhanced sentences.

The Commission has also received suggestions for improvement or modification to the sentencing guidelines and the sentencing process. Participants in the judicial focus group, for example, mentioned certain offenses that the Commission may consider ranking differently to reflect their severity more consistently with actual practice. The focus group also suggested that the Commission study whether the guidelines are

⁸ Examples of the judicial insights included the following: “guidelines provide an appropriate anchor for individual sentences;” “because they have wide ranges, the guideline recommendations are not unduly restrictive;” and “the guidelines are user friendly.”

⁹ Defendants convicted in the Superior Court serve their prison sentences in facilities operated by the federal Bureau of Prisons. To the extent defendants are detained in the District of Columbia jail between arrest and sentencing, a reduction in case processing time should result in savings for the District’s Corrections budget.

causing some confusion in the imposition of long split sentences¹⁰, and whether certain aspects of the criminal history rules might be simplified. Procedurally, the group recommended that there be a more systematic mechanism for judges to advise the Commission about guideline calculation errors made by CSOSA in the preparation of the PSR, and that there be a more efficient procedure for the parties to challenge the guideline calculations, particularly the criminal history scoring, prior to the sentencing hearing.

Based largely on this feedback, the Commission has developed a list of issues to revisit prior to the 2006 Annual Report and beyond. The Commission also expects to conduct future focus groups, as well as practitioner surveys, to evaluate how the pilot sentencing guidelines are impacting the criminal justice system. One such focus group of Criminal Justice Act defense attorneys is currently scheduled for January of 2006. The Commission hopes that the advice gathered from these outreach efforts will supplement and enhance the sentencing data currently being collected and analyzed during pilot period and will inform the Commission's recommendations in 2006.

¹⁰ A long split sentence is one where the court imposes a sentence within the applicable prison range, suspends execution of all but a term that also falls within the applicable prison range, and places the defendant on probation for a period up to five years. Because both the sentence imposed and the term to be served initially falls within the applicable prison range, this is a compliant sentence.

❧ Chapter 2

Superior Court Compliance with the Pilot Sentencing Guidelines through September 30, 2005

As noted in Chapter 1, the pilot sentencing guidelines are voluntary. Accordingly, a judge may elect not to follow the guidelines in a particular case. When that occurs, judges are encouraged to state their reasons for sentencing outside the guidelines. Even though the guidelines are voluntary, the Superior Court and the Commission anticipate a high degree of compliance¹¹. Now that the sentencing guidelines have been in effect since June 2004, the Commission is able to report some preliminary data on compliance. It should be noted that this analysis is preliminary and subject to change, and that a detailed review of most crime categories cannot be undertaken for at least another year, after more felony convictions and sentences occur under the guidelines. At this stage, however, it is fair to say that early returns indicate reason for optimism, as discussed below.

As explained in our previous Reports, the Master and Drug Grids were designed with a recommended sentencing range for each of sixty boxes corresponding to a particular offense severity level and criminal history score. In some boxes, a prison sentence is the only option consistent with the guideline recommendation. In some boxes, either a prison sentence or a short split sentence -- defined as a sentence in which the defendant serves a short sentence of six months or less and is then released to a period of probation -- is an option. In the remaining boxes, a prison sentence, a short split sentence and probation are all options permitted by the guideline recommendation. The rationale for this scheme is discussed in our previous reports.

The available options and relatively broad prison ranges, which preserve the judge's discretion to take into account factors other than the offense of conviction and the criminal history of the offender and to sentence anywhere within the range, are

¹¹ If the voluntary guidelines accomplish their basic purposes of making sentences more predictable and more uniform, there is good reason not to change their voluntary character. The Supreme Court has held in a series of decisions that mandatory or presumptive guidelines violate the Sixth Amendment if the judge uses an aggravating fact to sentence above the guideline range, unless that fact is either admitted by the defendant as part of his guilty plea or proven to a jury beyond a reasonable doubt. See United States v. Booker, ___U.S. ___, 125 S. Ct. 738 (2005); Blakely v. Washington, 542 U.S. 296 (2004).

among the reasons why the Commission anticipates most offenders will be sentenced “within the box.” In addition, statutory enhancements are accommodated by raising the upper limit of prison range within the box without changing other options. The Commission also recognizes that there are extraordinary cases, where a sentence within the box would not serve the ends of justice. Consequently, the guidelines contain a non-exclusive list of aggravating and mitigating factors, which permit sentencing above or below the prison range in a given box or the imposition of probation or a split sentence in a prison only box. In order to rely on an aggravating or mitigating factor, the judge must find it to be substantial and compelling on the facts of the particular case. In other words, it cannot be a factor that is included in the elements of the offense itself or is typically present in cases resulting in a conviction for that offense. The judge must state on the record the aggravating or mitigating factor(s) upon which he or she relied in sentencing outside of the box¹². A judge may also opt not to follow the guidelines in a case, but when this occurs the judge is expected to state his or her reasons to enable the Commission to assess whether there is a flaw in the guidelines that can or should be corrected or whether the judge simply chooses to sentence outside the guidelines in that case.

In order to be considered compliant, a sentence must be consistent with the applicable guideline in all respects. Thus, in making the prison vs. probation decision (sometimes referred to as the in/out decision), a sentence to probation complies with the guidelines only if the sentence falls within a box for which probation is one of the recommended options or the judge expressly relies on one of the mitigating factors. Similarly, a prison sentence is compliant only if it is within the range set forth in the applicable box or the judge expressly relies on one of the mitigating or aggravating factors to depart. For a split sentence to be guideline compliant absent a mitigating factor, the length of any imposed prison term before any time is suspended must fall

¹² As noted, because the system is voluntary and the lists of aggravating and mitigating factors are non-exclusive, a judge may sentence outside the box based on a factor that is not among the listed aggravating and mitigating factors. If the judge finds a comparable, non-listed, aggravating or mitigating factor substantial and compelling in a given case and says so, the sentence is deemed to be outside the box but compliant with the guideline. Over time, a recurrence of these cases may cause the Commission to add to the lists of aggravating or mitigating factors. Even if the judge finds no compelling reason to depart and simply elects not to follow the guideline in a particular case, the judge is encouraged to state why he or she departed; and if similar departures happen with some frequency in the same category of cases, the Commission may reexamine the appropriateness of the guideline recommendations for that category.

within the guideline range and the portion to be served must either be within the prison range (long split) or be six months or less (short split) in a box providing the option of a short split sentence. For example, Box 6A on the Master Grid allows for a prison sentence in the range between 18 and 60 months and also allows for a short split sentence. Thus, a sentence of 36 months in prison is within the box, as is a sentence of 36 months, with all but six months suspended, followed by a period of probation; but a sentence of 12 months is not within the box, nor is a sentence of 36 months, with all but 12 months suspended, followed by a period of probation¹³. Finally, a sentence of 36 months, all suspended, followed by a period of probation would not be compliant with the guidelines because probation without a split sentence is not a permissible option in Box 6A unless the judge expressly relies on one of the mitigating factors.

Sentencing Variation

As stated in our 2003 annual report, prior to the introduction of the pilot sentencing guidelines, “[s]ubstantial unexplained variability in sentencing exist[ed].” Since the guidelines were proposed as a means of reducing this unexplained variability, one measure of the success of the District of Columbia pilot sentencing guidelines should be evidence that variability is reduced after introduction of sentencing guidelines.¹⁴

Taking drug offenses as an example, the Commission compared sentences for 2003 (the last complete year pre-guidelines) to post-guideline sentences (June 2004 through September 2005)¹⁵. The typical drug distribution crime in Superior Court is a small street-level sale, often committed by a person who uses drugs, not someone high up in a drug organization responsible for distribution of large quantities of drugs.

¹³ In this example, a so-called “long split sentence” would also be “within the box,” as long as the time to be served on the split sentence is at least 18 months. Thus, a sentence of 60 months with all but 18 months suspended, followed by a period of probation, is within the box because both the 60 month term and the 18 months to serve on the split are within the guideline range for that box.

¹⁴ The criminal history data available to the Commission before the implementation of guidelines were flawed. As a result, comparison of sentences before and after guidelines is only reliable across offense severity groups, without regard to criminal history.

¹⁵ Felony drug convictions come generally in two forms: (1) distribution of or possession with intent to distribute a controlled substance, and (2) attempted distribution of or attempted possession with intent to distribute a controlled substance. The “attempt” convictions carry the same statutory penalties as the completed crimes, but they are usually the result of plea bargains and they carry lower guideline recommendations. For purposes of comparison, the Commission separated the “attempts” from the completed crimes.

In drug cases, three preliminary findings are notable: while the average effective¹⁶ sentence went down, the median¹⁷ effective sentence went up (indicating that some of the lowest sentences pre-guidelines are being replaced by higher sentences post-guidelines), In addition, the longest sentences found in 2003 are not seen in the sentences imposed under the guidelines (indicating a replacement of some of the highest sentences pre-guidelines by lower sentences post-guidelines). Specifically, the median sentence for completed drug crimes increased from 8 months to 15 months, while the average sentence (arithmetic mean)¹⁸ decreased from 20 to 15 months. Similarly, the median sentence for attempt drug crimes increased from 4 months to 6 months, while the average sentence decreased from 14 to 9 months. Looking at the sentences in the highest range, in 2003 five percent of all sentences for completed drug offenses were 72 months or longer; after guidelines, the top five percent fell to 40 months or longer. Similarly, for attempted drug offenses, before guidelines, the top five percent of all sentences were 42 months or longer; after guidelines, the top five percent were 27 months or longer, again indicating reduced variability. Finally, there are no drug crime sentences beyond 80 months post-guidelines, while there were several sentences in that range sentences pre-guidelines. As a result, on both ends of the continuum, variability appears to have been reduced post-guidelines through the reduction of some of the more extreme sentences. This preliminary evidence suggests that guidelines are having their intended effect, the reduction in unexplained variability, at least for the sentencing of drug crimes during the first year of the pilot phase.

¹⁶ The effective sentence is being used here as the prison portion of the sentence, if any, that the defendant is actually sentenced to serve. It is distinct from the imposed sentence, which may be suspended in part or in whole. Split sentences are calculated using the prison portion of the split. Probation sentences are included in the calculation as zero months.

¹⁷ The median is the middle of a distribution: half the sentences are above the median and half are below the median.

¹⁸ The arithmetic mean is commonly called the average. It is the sum of all scores divided by the number of scores. Because the mean can be greatly influenced by extreme scores, for example a small number of unusually long sentences, other measures such as the median may be more informative.

Sentencing Guideline Forms

During the period June 2004 through September 2005, the Commission collected 2,574 Sentencing Guideline Forms (SGFs), representing guideline recommendations and actual sentences on 2,574 felony counts in approximately 2,100 felony cases.

Drug Grid SGFs accounted for 1,169 counts or 45 percent of all forms. SGFs representing counts that fell in probation-eligible boxes on both grids accounted for 55 percent (1,425 SGFs) of the total number, and short split-only SGFs accounted for an additional 13 percent. Conversely, 32 percent of all SGFs collected so far are in prison-only boxes, and these typically represent more serious crimes and/or offenders with more serious prior criminal records¹⁹. Eighty-eight percent of all drug SGFs are in probation eligible boxes, meaning that judges have the discretion to give probation, a short split sentence, or a prison sentence in the vast majority of drug cases. Conversely, only 45 percent of SGFs on the Master Grid are in probation eligible boxes.

Sentencing “Within the Box”

Of the 2,574 SGFs collected, 90 percent of the effective sentences (the prison portion of the sentence, which, in the case of split sentences, is shorter than the imposed prison sentence before some of the prison term is suspended) are compliant with the sentencing options and within the guideline range (“within the box”) for that crime. More than 92 percent of effective sentences on the Drug Grid are within the guideline range, and 87 percent of effective sentences are within the guideline range on the Master Grid.

Overall, ten percent (252 SGFs) of effective sentences are outside the guideline range. Departures below the guidelines accounted for 7.8 percent (196) of total SGFs, and departures above the guidelines accounted for 2.2 percent (56). Based on the information available to date, it appears likely that most of the non-compliant

¹⁹ One explanation for the relatively small number of the more serious cases in the sample is that these cases tend to be more complex for a variety of reasons, and they take longer to work their way through the system to a conviction. If the present rate continues, the number of the most serious cases in the database at the end of the current pilot period in November of 2006 may not be sufficient to support reliable conclusions about the operation of the guidelines in the upper third of the Master Grid.

sentences are attributable to split sentences where the portion to be served is longer than six months (the ceiling for a "short split" sentence) but shorter than the minimum prison sentence for that box (the floor for a "long split" sentence). Other apparent departures may in fact be compliant with the guidelines, but aggravating or mitigating factors considered by the judge or statutory sentencing enhancements have not been reported properly. The Commission will work in the upcoming months to examine departure reporting and departure sentences. Given the relatively low number of departures to date, further generalizations are probably unwarranted at this time.

To give some context to the compliance rate for the District of Columbia guidelines, a national comparison is helpful. A recent study compared compliance rates for several presumptive and voluntary sentencing guidelines systems, all well-established structured sentencing systems²⁰. Of the six states reviewed, the compliance rate varied from 73 percent in Minnesota to 87 percent in Maryland. While compliance rates are influenced by many factors, including the particular rules of the systems and the width of the ranges, the District of Columbia's compliance rate appears to compare favorably with other jurisdictions.

A Closer Look at the Drug Grid Compliance

The relatively large number of drug cases that have reached conviction during the first year of the guidelines permits some additional observations about compliance and the effect of the guidelines. The drug cases also offer a good window on crime generally, not only because they continue to represent such a high percentage of all cases prosecuted in Superior Court, but also because so many of those arrested and prosecuted for all crimes, drug offenses and non-drug offenses alike, abuse controlled substances²¹.

²⁰ Kim S. Hunt & Michael Connelly, *Advisory Guidelines in the Post-Blakely Era*, 17 FED. SENT. REP. 236 (2005).

²¹ By almost any measure, there is a close link between drugs and crime. In 2004, 44 percent of DC adults arrested for crimes tested positive for one of 5 illegal drugs. Cocaine and crack cocaine continue to represent the overwhelming drugs of choice among adults who test positive. See December 2004 Drug Test Statistics and Year End Data (Adult Arrestees) Report of the District of Columbia Pretrial Services Agency (February 9, 2005). This rate was down from 2003, when 47 percent of adults tested positive at arrest. The percentage of positive drug tests would undoubtedly be significantly higher if the Pretrial Services Agency were to test adult arrestees for marijuana. The rate of positive drug tests at arrest is alarmingly higher for juveniles, whose primary drug of choice is marijuana by an

Of the 1,154 SGFs in groups Drug-2 and Drug-3, 1,069 (92.6 percent) were sentenced “within the box.” Due to wide prison ranges and the substantial number of cases that are probation eligible (88 percent), this compliance figure is not unexpected. However, even this rate of compliance may understate the degree to which judges are inclined to comply with the guidelines in drug cases. Of the 85 SGFs that are not within the box, 51 (60 percent) appear to comply with the spirit, if not the letter, of the applicable guideline. That is, they represent sentences that are departures of a technical nature. Usually, they occur in boxes that are eligible for a prison sentence, a short split sentence, or an entirely suspended sentence with probation. For example, a defendant with a relatively minor prior record convicted of attempt distribution of a controlled substance falls into Box 3B on the Drug Grid, which permits all three options described above. The judge could give any prison sentence between 10 and 24 months; the judge could impose that sentence and suspend it, placing the defendant immediately on probation; or the judge could impose that sentence, suspend all but six months of it (a short split) and place the defendant on probation after serving the six months²². However, if the judge imposes a sentence of 24 months (within the range) and suspends all but nine months, followed by probation, the sentence is not within the box and is counted as a technical departure, because the nine months is too long to qualify as a short split sentence (six months or less), but too short to qualify as a long split sentence (ten months or more in that box). Thus, while this hypothetical judge technically departed, the sentence of nine months to serve, followed by

overwhelming margin. In 2004, 50 percent of juveniles tested positive at arrest, which was also down by three percentage points from 2003. Of those who tested positive, close to one hundred percent were positive for marijuana, and some of those were also positive for other drugs. Another study in 2002 showed that more than two-thirds of jail inmates nationwide were found to be dependent on, or to abuse, alcohol or drugs. See Bureau of Justice Statistics Survey of Inmates in Local Jails (2002). In this study, jail inmates who met the criteria for substance dependence or abuse were more likely (70 percent) than other inmates (46 percent) to have a prior criminal record. They were nearly twice as likely as other inmates to have been homeless in the year before their offense (16 percent compared to 9 percent). Of convicted property and drug offenders, about one in four said they had committed their crimes to get money for drugs. Over half of inmates arrested for robbery, burglary, or drug offenses reported that they were under the influence at the time of the offense. Even acknowledging that many of these inmates may have had a motive to overstate the extent of their drug and alcohol use, these numbers are certainly indicative of a strong link between drug and alcohol use and crime.

²² Six months is used here as an example. It is the longest term the defendant can be required to serve on a short split sentence. It could be shorter. Drug Grid Box 3B also permits a long split sentence, but for such a sentence to be considered compliant, the judge must impose at least 10 months to serve on the split.

probation, is well within the spirit of the guideline recommendation, which permits either probation or a prison sentence but recognizes that immediate probation for this offender may not be appropriate, and that a prison sentence of at least ten months may be warranted.

As the Commission continues monitoring compliance, it will pay particular attention to all departures, those that depart for what appear to be a technical reasons as well as those that depart for more substantive reasons. The Commission will be particularly alert for sentences that depart for substantive reasons, as explanations for these departures will inform us about areas that may be worthy of reconsideration, such as sentencing ranges that judges appear to be finding too constraining, either too short or too long. For departures of a more technical nature, the Commission will focus on additional training and possible simplification or modification of the rules to the extent they may be unnecessary or counterproductive.

❧ Chapter 3

Superior Court Compliance with the Pilot Sentencing Guidelines through September 30, 2005

Although the Commission cannot draw definitive conclusions about the guidelines at this time, it can update its study of Superior Court sentencing practices under determinate sentencing (“new law”), first issued in its 2002 Annual Report and updated in 2003. Under determinate sentencing, which took effect for crimes committed on or after August 5, 2000, every prison sentence includes a single number for the term of imprisonment, and the offender is required to serve not less than 85 percent of this term. Overall, this analysis provides information on 10,696 new law cases between January 2001 and September 2005. The major crime types used for this analysis do not correspond exactly to the offense groups on the Master and Drug Grid in the new pilot guidelines system. Instead, to maintain consistency with the 2002 and 2003 reports, offenses are broken out into the following categories: violent, property, drug, weapon, public order, and other²³.

²³ These 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 groups 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, First Degree Theft, and Receiving Stolen Property. Distribution of and Possession with Intent to Distribute Cocaine are the most common felony drug crimes. 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 and violations of the Bail Reform Act. Other crimes are included in a category for “crimes not listed.”

Table 1-1 describes the type of felony sentence imposed each year under the new law since 2001. 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 probation²⁴. In 2001, 58 percent were sentenced to some period of incarceration under the new law. This figure increased to 79 percent in 2004 before dipping slightly to 77 percent during the first nine months of 2005. At least part of the explanation for this increase since 2001 is that the more complex cases, crimes of violence and cases resolved by trial, now appear in the database in significant numbers, and these cases are the crimes most likely to result in a prison sentence of some duration²⁵.

Year	Total sentenced	Incarceration	Probation	Other
2001	1082	628 (58%)	452 (42%)	2 (.2%)
2002	1969	1259 (64%)	697 (35%)	13 (.7%)
2003	2675	2039 (76%)	616 (23%)	20 (1%)
2004	2763	2182 (79%)	581 (21%)	0 (0%)

Table 1-1. Number and Percentage of Type of Sentences Imposed on Felony Defendants

²⁴ 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 judge may require the defendant to serve all or part of the remaining (suspended) prison term. Thus, these sentences are true hybrids - part prison and part probation. Although Table 1-1 includes split sentences with the incarceration sentences, short split sentences (six months or less to serve) could also be viewed, in a sense, as probation cases, particularly where the initial time to serve can be as short as thirty days, or even shorter.

²⁵ 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.

Table 1-2 shows the trends in the distribution of types of crimes by major offense categories for new law cases. Sentences for drug offenses increased from 40.2 percent of all cases in 2001, to 47 percent in 2004 and 46 percent in the first nine months of 2005. The percentage of sentences for violent offenses also increased from 15.8 percent in 2001 to 20 percent in 2003 and 2004, and has approached 21 percent in 2005. As noted above, the increase in the proportion of violent crime sentences in later years probably reflects, at least in part, the relatively low number of new law violent crime sentences in 2001.

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	Violent	542	20.3
	Property	316	11.8
	Drug	1159	43.3
	Weapon	276	10.3
	Public Order	300	11.2
	Other	82	3.1
	Total	2675	100.0
2004	Violent	561	20.4
	Property	261	9.4
	Drug	1308	47.3
	Weapon	179	6.5
	Public Order	374	13.5
	Other	80	2.9
	Total	2763	100.0
2005 (Jan-Sep)	Violent	456	20.7
	Property	227	10.3
	Drug	1022	46.3
	Weapon	180	8.2
	Public Order	278	12.5
	Other	44	2.0
	Total	2207	100.0

Table 1-2. Trends in Sentences Imposed on Felony Defendants

Sentence Length, January 2003 - September 2005

The previous section noted that the incarceration rate for felony offenders increased from 2001 (58 percent) to 2004 (79 percent), and remains high in 2005 (77 percent). However, the low rate of incarceration in 2001 appears to have been an aberration since the rate of incarceration was higher in earlier years. It is also important to note that the increase in the rate of incarceration has been accompanied by shorter periods of incarceration. One way to demonstrate this is to compare the number of determinate prison sentences in each year that were under 12 months, 12-35 months, and 36 months or more, as shown in Table 1-3.

Period of Incarceration	2001	2002	2003	2004	2005
Percent under 12 months	25%	21%	26%	25%	28%
Percent 12 to 35 months	37%	39%	43%	47%	47%
Percent 36 or more months	38%	40%	31%	28%	25%
Total Sentences	557	1522	1960	2119	1675

Table 1-3. Length of Incarceration Received by Felony Defendants (excludes Probation Sentences)

The 2001 determinate sentences were probably atypical, because the simplest cases tend to be disposed of most quickly. Also, 2001 is likely skewed by the high number of probation sentences given to less serious cases that progressed relatively quickly through the system, and thus is best set aside for purposes of analyzing trends. The number of determinate sentences under 12 months increased from 21 percent in 2002 to 28 percent in 2005. Similarly, the number of determinate sentences in the intermediate range from 12 months through 35 months also increased, from 39 percent to 47 percent. Conversely, the number of sentences with a term of imprisonment of 36 months or more declined as a proportion of the total, from 40 percent to 25 percent.

In summary, the decline in sentences to a period of probation, illustrated in Table 1-1, is offset to some extent in Table 1-3 by a greater proportion of prison sentences for periods of less than three years. In future years, the Commission will continue to study

sentencing trends, expanding the analysis to include how sentencing appears to have changed under the guidelines both for individual offenses and within group ranges²⁶.

²⁶ This analysis is contingent on sufficient data in each category of study. At this point, the Commission does not have sufficient data to expand the analysis.

❧ Chapter 4

Ongoing Tasks of the D.C. Sentencing Commission

Sentencing guideline systems throughout the country vary widely, but nearly all accept the premise that there should be a permanent policymaking body, usually called a sentencing commission, with research and prescription responsibilities²⁷. As the 2003 Annual Report discussed in more detail, sentencing commissions fulfill numerous purposes as adjuncts to state legislatures, courts and executive branch agencies²⁸.

While most of the D.C. Sentencing Commission's emphasis continues to be on developing guidelines that meet statutory purposes of punishment and reduce sentencing disparity²⁹, the Commission should also serve important management and communicative functions.

²⁷ See Am. Law Inst., Model Penal Code: Sentencing, Plan for Revision (Kevin R. Reitz reporter, 2002), reprinted in 6 Buff. Crim. L. Rev. 525, 539-40 (2002).

²⁸ These purposes include: (1) establishing sentencing policies and practices for courts that meet statutory purposes of punishment; (2) developing sentencing guidelines recommending appropriate punishment; (3) advising, assisting, and responding to inquiries by legislative and executive bodies regarding the development of effective and efficient crime policy; (4) collecting, analyzing, researching, and distributing data and information on crime, sentencing, and corrections issues; (5) serving as an information resource for the government and the public regarding crime, case processing, the imposition of punishment, and the consequences of punishment; (6) promoting uniformity and fairness in sentencing; (7) assisting other branches of the government with resource (e.g., correctional) management and savings; and (8) analyzing decisions at the case-specific level to determine whether broad policy judgments of government bodies are being implemented in practice.

²⁹ Section 3-101(b)(2) of the D.C. Code requires that the Commission ensure that all felony sentences reflect the seriousness of the offense and the criminal history of the offender, provide for just punishment, afford adequate deterrence, and provide needed training and treatment. Section 3-101(b) also requires that the Commission make recommendations to the Council for the establishment of a fair, rational, and effective sentencing system.

In an October 2005 symposium on sentencing reform, Michael Tonry, a professor of law and criminology and a nationally recognized expert on sentencing, discussed two types of management functions: cost-effectiveness and resource projection³⁰. Regarding cost effectiveness, Tonry explained:

“Court dockets are crowded, treatment resources are scarce, and correctional programs including prisons are overcrowded and under-resourced. Managers have to figure out how to juggle their budgets and manpower to keep cases flowing, hold backlogs down, and prioritize their resource allocations so that the most serious and important cases receive the attention they deserve. Most courts and prosecutors’ offices have monthly case-disposition and backlog targets. This is generally understood to mean that most cases must be resolved as quickly as can be by a guilty plea, trials should be avoided whenever possible, and bench trials are preferable to jury trials”³¹.

A Bureau of Justice Assistance monograph on correctional cost savings discusses several ways in which increasing case disposition speed might reduce correctional costs³². In many states, prosecutors and defense attorneys, through early intervention and disposition, have been instrumental in reducing case-processing time to alleviate jail crowding³³.

³⁰ See Michael Tonry, *The Functions of Sentencing and Sentencing Reform*, 58 *Stan. L. Rev.* 37, 43-45 (2005). The District of Columbia Sentencing Commission serves at the pleasure of the Council. It holds no prescriptive positions on the kinds of policy roles the Council should assign to it, and it has not endeavored to build consensus for any particular role. Therefore, the focus of this discussion is on the types of functions various members of the Commission, including Council members on the Commission, and others have suggested the Commission can perform after the adoption of sentencing guidelines.

³¹ Tonry at 56. (emphasis added). One can quarrel with the values expressed in this statement, but whatever values a jurisdiction adopts, the Sentencing Commission can play an important role in assuring that those values are served.

³² Bureau of Justice Assistance, *A Second Look At Alleviating Jail Crowding: A Systems Perspective*, (2000). See also Chapter I, footnote 8.

³³ *Id.* at 41 and 61.

Over the past several months, the Sentencing Commission has received anecdotal evidence that the sentencing guidelines have led to earlier guilty pleas. Because the voluntary sentencing guidelines allow the parties to predict the likely sentence in a case with greater accuracy, judges, defense attorneys, and prosecutors are reporting that the guidelines have improved the plea bargaining process. Parties now can predict more confidently how pleading to one charge as opposed to another will effect the likely sentencing decision. There is anecdotal evidence that this predictability has made it easier for the parties to evaluate possible plea offers and for defense counsel to explain to their clients the benefits and risks of the plea offer. Similarly, it is easier with the guidelines to see the possible impact of sentence enhancers, thus making the utilization of non-mandatory statutory enhancements more transparent. Over the coming year, the Commission hopes to be able to look more closely at the question of whether case disposition time has in fact been reduced since the implementation of the sentencing guidelines.

“One of the great advantages of sentencing guidelines is that they are a proven tool for effective resource management. States that adopted sentencing guidelines as a resource-management tool have successfully tailored their sentencing policies to their correctional budgets and programs. By making sentencing decisions predictable in the aggregate, guidelines enable policymakers to project likely future resource needs. If, for example, a jurisdiction contemplates doubling sentence lengths for sex crimes, it can project how many more prison beds will be needed. If current and planned facilities cannot accommodate the increased numbers, policymakers can respond in a number of ways. They can appropriate funds to build new facilities, revise sentences for other offenses downwards to free up the needed spaces, reconsider whether the sex-offender proposal is a good idea, or do some combination of these things”.³⁴

³⁴ Tonry at 59. (emphasis added).

As the Council is aware, any recommendation by the Commission for changes must take into account existing correctional and supervisory resources and be accompanied by a correctional impact assessment³⁵. The Commission has access to computer based resource management technology to enable it to make projections for future correctional needs.

Turning to the communicative function of sentencing commissions, Tonry explained that some policymakers “urge that it is important to try to assure the public that its anxieties and preferences are being addressed, maintain confidence in the legal system, denounce wrongful behavior, and reinforce basic social norms.³⁶” Members of the D.C. Sentencing Commission have also stressed the significance of public education and information to increase public confidence in the legitimacy of the justice system. As Tonry succinctly sums up, the overall goal is “a sentencing system that is fair, evenhanded, and consistent, that takes realistic account of key management interests, and that optimizes legitimacy, public reassurance, and public confidence.³⁷” To the extent that the D.C. Commission can assist the Council in meeting that goal, it looks forward to an enhanced research, analysis, and policy role in the years ahead.

³⁵ D.C. Code §3-106 also requires that the Commission make its cost projections “without regard to the identity of the particular governmental body responsible for financing the correctional facilities or services at issue.” Moreover, even though the District’s sentenced felons are housed in facilities operated and paid for by the federal Bureau of Prisons, the District has an obvious interest in knowing which of its citizens are sent to prison, and for how long.

³⁶ Tonry at 44.

³⁷ *Id.* At 64.