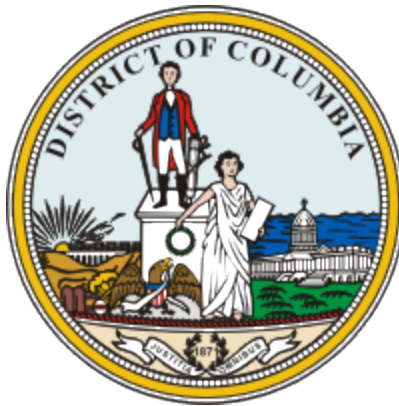




# DISTRICT OF COLUMBIA SENTENCING AND CRIMINAL CODE REVISION COMMISSION

## 2011 ANNUAL REPORT



APRIL 27, 2012

DISTRICT OF COLUMBIA SENTENCING AND CRIMINAL CODE REVISION  
COMMISSION

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### *Mission Statement*

*The mission of the District of Columbia Sentencing and Criminal Code Revision 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.*



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April 27, 2012

The Honorable Kwame Brown, Chairman  
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Dear Chairman Brown:

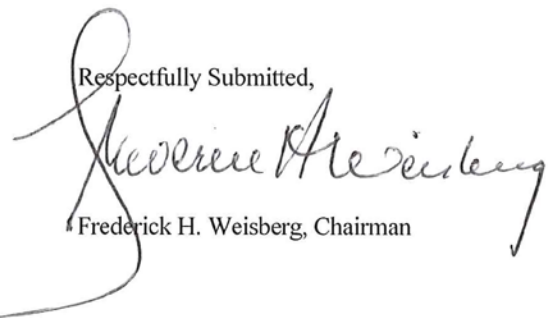
In compliance with its statutory obligation, the District of Columbia Sentencing and Criminal Code Revision Commission respectfully submits its 2012 Annual Report.

This year's report provides an overview of the activities undertaken by the Commission to improve the reliability of data it receives from both the D.C. Superior Court and the Court Services and Offender Supervision Agency (CSOSA). The report also presents an analysis of felony sentences in the District from January 1, 2011 through December 31, 2011. Judicial compliance with the Voluntary Sentencing Guidelines reached 97% this year, the highest percentage since their implementation and a clear indication of their acceptance among both the judiciary and criminal justice practitioners.

During 2011, the Commission, in partnership with CSOSA, implemented a new electronic Sentencing Guideline Form to facilitate the transfer of criminal history information required to measure judicial compliance with the Guidelines. This new process will facilitate a more efficient and comprehensive sharing of data ensuring the analysis of compliance is both timely and accurate. In addition, the Commission changed the way it measures compliance, which allows for a more nuanced analysis of both compliant and non-compliant sentences. These changes advance the Commission's goal of reducing unwarranted disparities and promoting fairness and consistency in sentencing.

Finally, Commission continues its work on the Criminal Code Revision Project, with emphasis on developing clear, concise and consistent language throughout the District's criminal code. These revisions will ensure both appropriate and effective application of the code in all criminal matters.

Respectfully Submitted,



Frederick H. Weisberg, Chairman

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## **EXECUTIVE SUMMARY**

The District of Columbia Sentencing and Criminal Code Revision Commission's (the Commission) 2011 Annual Report analyzes felony sentences imposed during 2011, describes substantive changes made to the Sentencing Guidelines, and identifies the rankings assigned to new felony offenses enacted during the year. This report also provides an overview of the Commission's work on the Criminal Code Revision Project. In addition to its statutory obligations, the Commission has undertaken a variety of activities to improve data collection and quality allowing it to better analyze sentencing trends and judicial compliance with the District's Voluntary Sentencing Guidelines.

### **Analysis of Felony Sentences**

During 2011, 2,855 felony cases resulting in 3,959 individual counts were sentenced in the Superior Court of the District of Columbia (Superior Court) and reported to the Commission. Of the total number of cases sentenced, 2,372 were single count cases and 483 represented multiple count cases. Slightly more than 91% of all cases were disposed of through guilty pleas, with jury and bench trials accounting for only 9% of the total dispositions. Over half of all cases and counts received a sentence of incarceration, followed by probation, with split sentences accounting for the least number of sentences imposed.

Chapter Four provides an analysis of the sentences imposed for drug and non-drug offenses. Drug offenses represented just over 32% of all offenses sentenced. Non-drug offenses accounted for almost 68% of the total number of sentences, with violent crimes accounting for slightly over 25% of non-drug offenses.

Five grouped offenses including Possession with Intent to Distribute a Controlled Substance/ Distribution of a Controlled Substance (PWID+Dist), Attempted Drug Offenses, Weapon Offenses, Assault Offenses and Robbery Offenses account for slightly over 70% of all felony sentences imposed. A discussion of sentencing trends and offender demographics for these five offense categories is also included in Chapter Four.

### **Judicial Compliance**

Chapter Five focuses on judicial compliance with the Sentencing Guidelines. Compliance involves comparing the sentence imposed with the sentence recommended under the Guidelines. A sentence is considered compliant if it falls within the Guideline compliant range determined by the Offense Severity Group ranking and criminal history category of the offender for each felony offense. If the sentence imposed falls within the Guideline range or if the Guidelines authorize a departure outside of that range, the sentence imposed is considered compliant.

Overall compliance rates for the sentencing guidelines have consistently been near or above 90% since their implementation in 2004. However, this year's compliance rate of 97.4% represents the highest rate to date and is a strong indicator of the acceptance and use of the Guidelines by Superior Court judges. Further analysis of compliant sentences reveals that 95% of sentences were compliant-in-the-box sentences, with compliant departures representing only 1.6% percent

of all sentences. Non-compliant sentences accounted for 2.6% of all felony sentences and were highest among drug offenses.

### **Modifications to the Sentencing Guidelines**

This past year brought significant modifications to the Sentencing Guidelines which represented some of the first major structural changes to the Guidelines since their inception in 2004. The Commission's mandate requires it to promulgate revisions to the Guidelines to ensure certainty, consistency and adequacy of punishment. To support this mandate, the Commission revised the Drug Grid for pleas and verdicts entered on or after June 15, 2011, to create a more rational and proportional sentencing structure for drug offenses.

Chapter Two presents an overview of the rationale for restructuring the Drug Grid from its original three Offense Severity Groups to the revised four Offense Severity Groups and the redistribution of a limited number of drug offenses throughout the grid. Serious drug offenses remained on Drug Grid D1 and D2, with drug offenses having lower statutory maximums ranked on D3. Drug Offense Severity Group 4 (D4) was created solely for attempts and conspiracies of D3 offenses, in addition to the new drug offense of Possession of Liquid PCP.

A second structural change recalculated the criminal history point value assigned to some prior misdemeanor convictions in the calculation of criminal history scores. Under this change, all misdemeanors with a designated penalty of 90 days or more are now scored. This revision ensures that serious misdemeanors, regardless of the prosecuting agency or its placement in the District's code, are included in an offender's criminal history. The Commission will continue to monitor the Guidelines and implement changes necessary to support the guiding principles of fairness, consistency and proportionality.

### **Ranking of Felony Offenses**

The Commission is charged with the task of ranking new felony offenses on the sentencing grids to ensure that the underlying goals of the Guidelines are supported. In 2011, the Commission ranked a total of 25 felony offenses including offenses focused on Human Trafficking, Sexual Abuse of a Secondary Education Student, Sexual Abuse While Armed and Possession of Liquid PCP. A complete list of new offense rankings can be found on pages 17-19 of the report.

### **Criminal Code Revision Project**

In addition to the Commission's mandate to develop, implement and monitor the Voluntary Sentencing Guidelines, the Council of the District of Columbia has directed the Commission to review the entirety of the District of Columbia Criminal Code and, based on that review, develop and propose a comprehensive set of revisions to the District's criminal laws. Chapter Six of this report provides the background and detailed legislative mandate for the Criminal Code Revision Project.

In January 2011, the Commission submitted to the Council the Fine Proportionality Act of 2011, which standardizes fines for all felony and most misdemeanor offenses. This initial



recommendation addresses inconsistencies and fine amounts found in the current criminal code and proposes fine amounts proportional to the penalty for a specific offense. This legislation is currently before the Council.

A comprehensive criminal code revision requires a significant investment of both time and resources, which has been a challenge for the Commission given the limited staffing allocated to this project. However, even with limited resources, the Commission will continue to move forward with its mandate by implementing a standardized language and organization scheme throughout the entire code to ensure that each code section is clear, consistent, and free of ambiguity. Proposed revisions may also include substantive changes when necessary and appropriate to promote consistency and clarity, remove historical anachronisms, or otherwise improve the code.

### **Data Quality Improvement**

Unlike offense, disposition and sentencing data provided to the Commission through an electronic data feed from the Superior Court, criminal history data is not transferred electronically from Court Services and Offender Supervision Agency (CSOSA). The Commission is working with CSOSA to improve the data transfer process to ensure all criminal history information is provided in a timely and efficient manner. In late 2011, the Commission and CSOSA developed and implemented an electronic Sentencing Guideline Form (SGF) that has embedded automated data quality functions that calculates, validates and corrects certain data fields to improve data quality. The new SGF also incorporates automated mathematical computations for criminal history scores ensuring that critical data points are entered in a consistent and uniform manner thus reducing data entry errors and improving the accuracy of criminal history information used to determine Guideline compliance.

## **CHAPTER ONE**

### **COMMISSION PROFILE**

#### **I. History of the D.C. Sentencing and Criminal Code Revision Commission**

##### **A. The Revitalization Act, the Truth in Sentencing Commission, and the Creation of the Advisory Commission on Sentencing (1997-1998)**

In 1997, Congress enacted the National Capital Revitalization and Self-Government Improvement Act of 1997 (the Revitalization Act). Among other important changes to the criminal justice system in the District of Columbia, this legislation closed the Lorton Correctional Complex, abolished the District of Columbia Parole Board, created the Court Services and Offender Supervision Agency (CSOSA), and transferred the control of imprisoned felony offenders from the D.C. Department of Corrections to the Federal Bureau of Prisons.

The Revitalization Act also created the Truth in Sentencing Commission (the TIS Commission), the purpose of which was to develop recommendations to the Council of the District of Columbia on amendments to the District of Columbia Code regarding sentences imposed for felonies committed on or after August 5, 2000. The TIS Commission's recommendations were required to meet the truth-in-sentencing standards of the Violent Crime Control and Law Enforcement Act for certain enumerated felonies (listed in section 11212, subsection (h) of the Revitalization Act and codified at D.C. Code § 24-112(h)). The truth-in-sentencing standards mandated determinate sentences for offenders convicted of certain felonies. Thus, for all "subsection (h)" felonies, the sentencing system was converted from an indeterminate system with a minimum and maximum prison term and parole to a determinate sentencing system, where the offender is required to serve at least eighty-five percent of the prison term imposed, followed by a period of Supervised Release.

For all felonies, the TIS Commission had to ensure that: (1) the sentence would reflect the seriousness of the offense and the criminal history of the offender, as well as provide for just punishment and deterrence, necessary educational and vocational training, medical care, and other correctional treatment for offenders; (2) good time credit would be calculated pursuant to section 3624 of Title 18 of the United States Code; and (3) an "adequate period of supervision" would follow release from imprisonment. The TIS Commission issued its formal recommendations to the Council for the District of Columbia on February 1, 1998. Limiting its actions to those that were required to comply with the Revitalization Act, the TIS Commission left to the Council's authority the development of any broader changes to sentencing policy in the District of Columbia. The recommendations proposed by the TIS Commission were

ultimately adopted by the Council as the Truth in Sentencing Amendment Act of 1998, D.C. Code § 24-403.01 (1998).

The TIS Commission submitted an additional Comments and Suggestions Report, which identified outstanding issues for the Council's consideration. One of these supplemental recommendations was to create an entity to advise and assist the Council in the development of sentencing policy. In response, the Council created the District of Columbia Advisory Commission on Sentencing (the Commission). *See* Advisory Commission on Sentencing Establishment Act of 1998, D.C. Code § 3-101 et seq. (1998). The Council directed the Advisory Commission to make recommendations consistent with the goals of the Revitalization Act, including the use of intermediate sanctions in appropriate cases, to conduct an annual review of sentencing data, policies and practices, and to suggest any other appropriate factors to enhance the fairness and effectiveness of criminal sentencing policies and practices in the District of Columbia.

#### B. The Sentencing Reform Amendment Act of 2000 and the Development of Sentencing Guidelines in the District of Columbia (1998-2004)

The Commission conducted extensive research on sentencing practices in the District. Based upon this research, the Commission prepared submissions to the Council pursuant to its mandate. This resulted in the 1999 publication of *Criminal Sentencing Practices in the District of Columbia 1993-1998*. In response to specific directives from the Council, on April 5, 2000, the Commission issued *Sentence Recommendations to the Council of the District of Columbia*. This report included several important recommendations, the most prominent being the evolution from indeterminate to determinate sentencing for all felony offenses, the elimination of parole, and the imposition of Supervised Release following incarceration. The 2000 report also suggested that the District consider adopting some form of structured sentencing as a way to promote fairness under the new determinate sentencing system. The Council adopted these recommendations in the Sentencing Reform Amendment Act of 2000, D.C. Code § 24-403.01 (2000). This legislation gave the Commission the additional responsibilities of surveying structured sentencing systems around the country and recommending the type of structured system, if any, that would best serve the needs of the District's criminal justice system. The Commission was also to continue reporting on the implementation of determinate sentencing in the District.

In 2003, the Commission recommended the adoption of Voluntary Sentencing Guidelines for the District of Columbia. The following year, the Council enacted the Advisory Commission on Sentencing Structured Sentencing System Pilot Program Amendment Act of 2004, directing the Commission to assist the Superior Court of the District of Columbia (Superior Court) with the implementation of the guidelines as a pilot program. *See* Advisory Commission on Sentencing

Structured Sentencing Pilot Program Amendment Act of 2004, D.C. Code § 3-104 (2004). This legislation also made the Commission a permanent agency, renaming it the District of Columbia Sentencing Commission. Superior Court judges began imposing sentences under the Voluntary Sentencing Guidelines for all felony pleas and verdicts on and after June 14, 2004. To date, the Commission continues to monitor the implementation of the sentencing guidelines in the District. *See* District of Columbia Sentencing and Criminal Code Revision Commission Amendment Act of 2007, D.C. Code 3-101 (2007).

#### C. Revision to the Criminal Code and Continued Monitoring of Voluntary Sentencing Guidelines (2004-present)

In 2006, the Council turned its attention to the District of Columbia Criminal Code. The Council expressed concern about confusing and outdated language and overlapping provisions in the criminal code that were potentially affecting fairness in sentencing practices. In 2006, after research and input from the public, the Council directed the Commission to examine the criminal code and to make recommendations to provide for a uniform and coherent body of law. *See* Advisory Commission on Sentencing Act of 2006, D.C. Code § 3-101.1 (2007). The resulting Advisory Commission on Sentencing Act of 2006 also expanded the membership of the Commission, and again changed its name to the District of Columbia Sentencing and Criminal Code Revision Commission. The Act directed the Commission to examine the District's criminal statutes to ensure clear and consistent language, to organize existing statutes in a logical order, to address proportionality of fines and penalties, and to propose a classification system for misdemeanor statutes, as well as any amendments necessary to facilitate the equitable administration of the criminal laws in the District of Columbia.

In January 2011, the Commission submitted the Fine Proportionality Act of 2011 to the Council and the Mayor. This draft legislation proposes standardizing criminal fines for all felonies and most misdemeanors in the District. In response to this recommendation, the Councilman Mendelson introduced the Fine Proportionality Amendment Act of 2011 (Legislation number B19-0214).<sup>1</sup> Further, the Commission created and maintains a standing committee to conduct in-depth research and to develop additional proposals for areas of code reform.

The Commission continues actively to pursue its mandate to promote fair and consistent sentencing policies. Since its inception, many important reforms have been accomplished, including the development of the District's current sentencing structure, which has consistently yielded high compliance rates and allowed the Commission to make recommendations based on actual sentencing research. The Commission looks forward to continuing its collaboration with

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<sup>1</sup> The Act currently remains pending before the Council.

the Council, the judiciary, and the criminal justice agencies to ensure that the District of Columbia's public safety and justice needs are met.

## **II. Legislative Mandate**

The Commission currently has two primary statutory responsibilities: monitoring the Voluntary Sentencing Guidelines and developing recommendations for criminal code revision. The former involves collecting data from the Superior Court and the CSOSA in order to assess compliance with the Guidelines, to identify problem areas, and to monitor trends in sentencing. This includes monitoring sentencing practices in general and providing reports to the Council and the Mayor on the state of sentencing practices in the District of Columbia. It also requires incorporating each new crime or sentencing provision enacted by the Council into the Guidelines' structure. Concurrently, the Commission is proceeding with its mandate to examine the criminal code in order to provide recommendations on revisions that will correct inconsistencies, achieve further proportionality in imprisonment terms and fines, and create clarity and coherence throughout criminal statutes.

## **III. Commission Membership**

The Commission is made up of twenty members, fifteen voting members and five non-voting members. Its membership includes representation from various criminal justice agencies, the judiciary, academic and research institutions, practicing attorneys, and the public.<sup>2</sup> This diverse membership guarantees a variety of perspectives when developing sentencing policy recommendations for the Council.

By statute, the voting members of the Commission are:

- Three judges of the Superior Court of the District of Columbia, appointed by the Chief Judge of the Superior Court;
- The United States Attorney for the District of Columbia or his or her designee;
- The Director of the Public Defender Service for the District of Columbia or his or her designee;
- The Attorney General for the District of Columbia or his or her designee;
- The Director of the Court Services and Offender Supervision Agency for the District of Columbia or his or her designee;
- Two members of the District of Columbia Bar, one who specializes in the private practice of criminal defense in the District of Columbia, and one who does not specialize in the

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<sup>2</sup> The legislation governing the D.C. Sentencing and Criminal Code Revision Commission can be found at D.C. Code § 3-101, et seq.

practice of criminal law, appointed by the Chief Judge of the Superior Court in consultation with the President of the District of Columbia Bar;

- A professional from an established organization devoted to research and analysis of sentencing issues and policies, appointed by the Chief Judge of the Superior Court of the District of Columbia;
- Two citizens of the District of Columbia who are not attorneys, one of whom is nominated by the Mayor subject to confirmation by the Council, and the other who is appointed by the Council; and
- Three professionals from established organizations, to include institutions of higher education, devoted to the research and analysis of criminal justice issues, appointed by the Council.

The non-voting members of the Commission are:

- The Director of the District of Columbia Department of Corrections or his or her designee;
- The Chief of the Metropolitan Police Department or his or her designee;
- The Director of the United States Bureau of Prisons or his or her designee;
- The Chairperson of the United States Parole Commission or his or her designee; and
- The Chairperson of the Council committee that has oversight of the Commission.

#### **IV. Commission Meetings and Activities**

The Commission meets several times a year to discuss sentencing data, to make modifications to the Guidelines, to rank any new offenses enacted by the Council, and to evaluate developments in sentencing policy in the District. Meetings are open to the public and interested parties are encouraged to attend. Meeting dates are published in advance in the D.C. Register and on the Commission's website.

In 2011, the full Commission met on the following dates:

January 18, 2011	June 21, 2011
February 15, 2011	September 20, 2011
March 31, 2011	October 18, 2011
May 24, 2011	December 13, 2011

The minutes of the full Commission's public meetings are available online at the Commission's website located at <http://sentencing.dc.gov>. Meetings are held on the third Tuesday of each month<sup>3</sup> and convene at One Judiciary Square, 441 4<sup>th</sup> Street, NW, Washington, DC 20001.

In the past year, the Commission engaged in a variety of sentencing-related activities that were developed, discussed, or ratified during its 2011 meeting schedule. It enacted changes to the Drug Grid, modified the rules governing the scoring of prior misdemeanor convictions, and clarified the criminal history scoring rules for defendants who were under 18 when they committed a prior crime in another state. The Commission ranked 25 offenses, approved revisions to the Guidelines Manual, implemented an automated Sentencing Guidelines Form (SGF), and continued its work on the Criminal Code Revision Project. Throughout the year, the Commission examined budget matters and outreach strategies, and published the 2010 Annual Report as well as three Issues Papers.

## **V. Committee Activities**

In addition to the meetings of the full Commission, several working committees meet regularly to formulate recommendations on specific sentencing policy issues. These committees offer proposals and suggestions for action by the full Commission. The following represents an overview of the Commission's committee structure.

Criminal Code Revision Committee: This committee works on the Criminal Code Revision Project. In conjunction with Commission staff, the Committee is currently evaluating the Code in order to present the full Commission with recommendations on potential code reform proposals. In 2011, the Criminal Code Revision Committee recommended modifications to the District's fine structure that eventually became the basis for the Fine Proportionality Amendment Act of 2011 introduced by the Council of the District of Columbia.

Research Committee: This committee was created in 2011 to undertake more complex, sentencing related research projects related to the Commission's objectives. The work of this Committee provides important information on sentencing practices under the Guidelines, and forms the basis for future policy recommendations made by the Commission. The Committee's first major project is a five-year evaluation of the Guidelines to examine the consistency of criminal sentencing across time, cases, and judges. This evaluation is scheduled to begin in 2014 and will analyze numerous sentencing related variables including: consecutive and concurrent sentencing patterns, initial charge versus charge of conviction, longest sentence imposed, time

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<sup>3</sup> Scheduled meeting dates, times, and places are subject to change without notice; however, the Commission makes every effort to immediately notify the public of any changes in the schedule via its website.

served, total sentence imposed, race and gender factors, and count versus case sentencing distinctions.

**Ranking Committee:** This committee submits proposals on new or modified criminal offense rankings to the full Commission. The Committee also evaluates potential policy changes that may affect the Guidelines, as well as sentencing issues that should be brought before the Commission for consideration. The Ranking Committee oversees the annual changes to the D.C. Voluntary Sentencing Guidelines Manual.

**Public Outreach Committee:** This committee seeks to educate the public, to serve as a resource to the community, and to collect information that will inform the Commission's efforts to effectively evaluate sentencing policy in the District of Columbia. In 2011, the Committee initiated the extensive changes to the Commission's website, much of which was geared towards providing resources to the public. In addition to continuing its development of online resources, in 2011.

## **VI. Staffing Developments**

In the early years of its existence, the Commission consisted of an executive director, a research analyst, a data manager, a staff attorney, and a staff assistant. When the Council expanded the Commission's mandate to address code reform, an attorney advisor was added to lead the project. The Commission welcomed a new research analyst in October and a new staff attorney in January 2012 to replace two state members who resigned during 2011.

In 2011, the Commission created a paralegal specialist position to assist with the extensive work associated with the Criminal Code Revision Project. This position works with the project director and the Criminal Code Revision Committee to research and evaluate potential code reforms. Furthermore, in order to better support the Criminal Code Revision Project, the Commission has requested that the Council convert the Project Director position to a fulltime employee starting in 2012. The Commission is currently recruiting to fill both positions.

## **VII. Website Changes**

In a continuing effort to increase public access to the most recent information on the D.C. Voluntary Sentencing Guidelines, the Commission continues to make extensive updates to its website located at <http://sentencing.dc.gov>. In 2011, the Commission focused on enhancing resources that provide educational materials on sentencing policy in the District. Nearly every page on the site was revised or reorganized. Efforts to improve the website included the following important modifications:

- An expanded history and timeline section



- Enhanced information on monthly meetings
- An expanded publications section to include all reports, manuals, and issues papers.
- A new Frequently Asked Questions section
- A new Sentencing Guidelines Alert section
- A new Glossary section

The updates aim to increase the web presence of the Commission and to offer easier access to helpful resources on sentencing and guidelines information in the District. The enhanced historical information and reference material should be of use to both the seasoned practitioner and any member of the public with no prior experience on sentencing matters.

## **CHAPTER TWO**

### **VOLUNTARY SENTENCING GUIDELINES**

The Commission's legislative mandate requires it to include in its annual report any substantive changes made to the Guidelines during the preceding year, including changes in the offense severity rankings, the recommended sentencing options or prison ranges, or the rules for scoring criminal history. If legislation during the year created new offenses or changed the penalties for existing offenses, the report must explain how the changes were incorporated into the Guidelines.

The past year brought significant modifications to the District of Columbia Voluntary Sentencing Guidelines, including some of the first major changes to the Guidelines since their inception. These modifications included both policy changes that altered the substance of the Guidelines, as well as technical changes that added to or clarified the Guideline Manual. Although the modifications were limited in scope, they have had an impact on how the judges apply the Guidelines and in how the Commission collects and analyzes sentencing data. Not only are certain offenses subject to different sentencing options, but the changes can also affect the criminal history scores of defendants sentenced under the Guidelines.

#### **I. Policy Changes to the Sentencing Guidelines**

##### **A. Changes to the Drug Grid**

The Commission's mandate requires it to promulgate revisions to the Guidelines in the interest of achieving certainty, consistency, and adequacy of punishment. To support this mandate, the Commission revised the Drug Grid for pleas and verdicts entered on or after June 15, 2011, to establish a more rational and proportional sentencing structure for drug offenses. The Drug Grid originally had three Offense Severity Groups; the 2011 revision created a fourth Offense Severity Group and redistributed a limited number of offenses throughout the Drug Grid.

The impetus for this change was the Council's 2010 reclassification of Possession of Liquid PCP as a felony. Possession of Liquid PCP is currently the only drug possession offense classified as a felony in the District; all other types of drug possession offenses are classified as misdemeanors. When attempting to incorporate this crime into the Drug Grid, the Commission uncovered a notable disproportionality in the way it had previously ranked certain drug crimes.

Prior to 2011, the Drug Grid categorized all Controlled Substance Distribution and PWID (Possession with Intent to Distribute) offenses in Drug Group 2 (D2), without reference to the

nature of the drug or the maximum penalty associated with the offense.<sup>4</sup> The revisions to the Drug Grid reallocated some of these crimes (and their attempts) to disaggregate the wide range of statutory penalties previously included in D2.

Offenses with a statutory maximum prison term of 30 years remain in D2 while offenses with a 3 or 5 year statutory maximum prison term were moved to D3 along with attempts to commit D2 offenses; D4 was created solely for attempts and conspiracies of D3 offenses. Thus, the revised Drug Grid retained the use of the higher Drug Group for the most common and most serious felony drug offenses (Distribution and PWID of Schedule I and II Controlled Substances). However, the Commission shifted lesser drug felonies in the Drug Grid to reflect the statutory structure of the District's drug laws.

The revisions also modified the shading in two of the Drug Grid boxes, thereby altering the sentencing options available for those boxes. Box 2C changed from a light shaded, probation permissible box to a dark shaded, short-split permissible box. Box 2D changed from a dark shaded, short-split permissible box to a white, prison only box.

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<sup>4</sup> As Chapter Four will show, the most common felony drug crimes in the District are Distribution and PWID. These crimes have four separate penalties depending on the type of drug involved: 30 years for Schedule I and II narcotic and abusive drugs (e.g., cocaine, heroin, PCP, and methamphetamines); 5 years for Schedule I and II non-narcotic and non-abusive drugs, as well as for Schedule III drugs (e.g. marijuana); 3 years for Schedule IV drugs; and 1 year for Schedule V drugs. As a practical matter, most felony drug convictions in the District are for offenses subject to a 30 year maximum. Drug offenses with 3 and 5 year maximum penalties were, and still are, uncommon. Furthermore, when the Guidelines were developed, sentencing data showed few instances of sentences approaching the 30 year maximum; rather, the sentences actually imposed seldom exceeded five years. Nevertheless, ranking the drug offenses in this way did not distinguish between offenses punishable by 3 years and ones punishable by 30 years. This resulted in an unusual disproportionality in the Drug Grid relative to the maximum statutory penalty for ranked offenses.

The following chart reflects the changes made to certain offenses in the Drug Grid (italicized text indicates offenses affected by this revision):

<b>Drug Group 1</b>	<b>Drug Group 2</b>	<b>Drug Group 3</b>	<b>Drug Group 4</b>
Distribution/PWID while armed (any drug)	Distribution/PWID of Sched. I and II narcotic and abusive drugs (heroin, cocaine, PCP, methamphetamine, etc.)	<i>Distribution/PWID of Schedule I, II, and III non-narcotic and abusive drugs (including marijuana-2<sup>nd</sup> offense or &gt; ½ pound)</i>	<i>Attempt/Conspiracy – Drug Group 3 Offenses (including Attempt Distribution/PWID of marijuana and Attempt Possession of Liquid PCP)</i>
	Maintaining Place for Drugs	<i>Distribution/PWID of Schedule IV drugs</i>	
	Enlisting Minors	Possession of Liquid PCP	
	<i>Attempt/Conspiracy – Drug Group 1 Offenses</i>	Drugs-Fraud	
		Drug Paraphernalia (Dist. to Minors)	
		Attempt/Conspiracy – Drug Group 2 Offenses	

The impact of this change on the imposition of sentences in drug cases is difficult to measure at this time. Although the modification represents a shift in how drug offenses are distributed on the Grid, the most common drug offenses in the District were not altered in this revision. It remains to be seen whether sentencing practices changed in response to this reallocation of drug crimes under the Guidelines.

#### B. Changes to the Criminal History Scoring of Misdemeanor Offenses

Under the Guidelines, a defendant's prior misdemeanor convictions are scored as .25 criminal history points. However, prior to modification, most misdemeanor convictions for offenses codified outside of D.C. Code Title 22 (the majority of criminal offenses) and D.C. Code Title 48 (drug offenses), most of which are prosecuted by the Office of the Attorney General, were not scored. Historically, the Guidelines did not clearly identify which of these misdemeanors should or should not count towards a defendant's criminal history score.

To eliminate any ambiguity in the scoring of misdemeanor offenses, the Commission introduced a new rule. The Guidelines now score misdemeanors according to the maximum statutory penalty for the offense of conviction, regardless of where the crime is located in the Code or who

the prosecuting authority is. If the maximum statutory penalty for a prior conviction is 90 days of incarceration or more, the conviction is scored as .25 points; however, if the maximum statutory penalty is less than 90 days incarceration, the offense is not scored.

The Commission also modified the total number of misdemeanor convictions that may be scored. Previously, a defendant could receive criminal history points from no more than six misdemeanor convictions; this limited a defendant's maximum criminal history score attributable to prior misdemeanor convictions to 1.5 points. Under the new rule, only four misdemeanors, for a total of one point, are counted towards the criminal history score.

This new rule expands and clarifies the universe of prior misdemeanor convictions that are included in the criminal history score to reflect a more accurate and inclusive calculation, and it particularly applies to certain misdemeanors prosecuted by the Office of the Attorney General that previously had not been scored. For example, misdemeanor crimes such as Driving Under the Influence (DUI) would now be scored in the criminal history calculation, despite falling outside of Titles 22 and 48. However, the impact of scoring more misdemeanors in criminal history scores is mitigated by limiting to four, or one point, the number of misdemeanors that are counted in an offender's total criminal history score.

### C. Out-of-District Scoring Rule for Defendants Under 18 at the Time of the Offense

The Commission implemented a new policy for scoring out-of-District prior convictions of defendants who were under the age of 18 at the time of their prior offense (effective June 21, 2011). Section 2.2.6 in the Sentencing Guidelines Manual outlines the specific procedure for scoring out-of-District convictions and adjudications. Generally, out-of-District convictions and adjudications are scored in the same manner as the District offense that they most closely match. Previously, the Guidelines did not provide specific guidance on scoring out-of-District convictions when the defendant received an adult conviction but was under 18 at the time of the offense. Depending on the nature and circumstances of the offense, the defendant could have been prosecuted as a juvenile or as an adult if the offense had occurred in the District of Columbia.

The new policy takes into account the District's statutory provisions and charging practices for prosecuting juveniles as adults.<sup>5</sup> The Commission designed the new policy to complement the

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<sup>5</sup> In the District, offenders 16 and 17 years of age who commit certain offenses (murder, first degree sexual abuse, burglary in the first degree, armed robbery, or assault with intent to commit any of these offenses) may be prosecuted as an adult. Upon a motion and hearing, offenders 15 to 17 years of age can be transferred from the Family Court to the Criminal Division for prosecution as an adult under specified circumstances. See D.C. Code § 16-2301, et. seq.

current standards for scoring out-of-District offenses and to reflect the specific guiding principles of the District's sentencing policies pertaining to juvenile offenders.<sup>6</sup>

## **II. Changes to the Guidelines Manual**

The discussion of the Commission's modifications to the Guidelines Manual is grouped into two categories. Category A lists the substantive amendments to the Guidelines and the Guidelines Manual for calendar year 2011; category B lists offenses ranked by the Commission in 2011.

### **A. Substantive Amendments to the Voluntary Sentencing Guidelines and Guidelines Manual**

Below are the Commission's substantive changes to the Guidelines Manual in calendar year 2011. Most of the following substantive amendments to the Guidelines became effective for pleas and verdicts entered on or after June 15, 2011. All references are to the Guidelines Manual.

#### Chapter 2

1. In section 2.2.2, the table is amended to reflect a modified rule for scoring prior misdemeanor convictions. This modified rule scores misdemeanors according to the maximum penalty of the offense of conviction. Where the maximum penalty is 90 days or more, it is scored .25 points. Where the maximum penalty is less than 90 days, it is not scored. Only four misdemeanors are counted towards the criminal history score, for a total of one point.
2. In section 2.2.3., the third paragraph is amended to add the sentence, "A conviction not scored under Section 2.2.9, however, cannot be used to revive another felony conviction."
3. In section 2.2.9, the following sentence is added: "Convictions that are not scored under this section also cannot be used to revive other felony convictions."
4. Rule 2.2.11, exempting traffic offenses from criminal history scoring, is repealed and deleted. Sections 2.2.12 and 2.2.13 have been re-numbered accordingly.

#### Chapter 4

5. The first paragraph is modified to include the enhancement of Committing a Felony While on Release.

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<sup>6</sup> See Part II Section A for the specific wording of the new policy.

## Chapter 7

6. In section 7.4, the definition of crime of violence is amended to add the sentence, “The term ‘crime of violence’ under the guidelines is used to determine consecutive and concurrent sentencing (see Chapter 6). This definition differs from that stated in D.C. Code § 23-1331(4).”
7. In Section 7.25, the definition for Revived Conviction was corrected to make clear that all revived drug group offenses are scored differently than convictions within the ten-year window. Applicable cross-references were also added.

## Chapter 9

8. In section 9.1, footnote 19 is modified to state: “If the court imposes a term of imprisonment greater than a year, the court must impose the term of supervised release fixed by the statute: 3 or 5 years depending on the maximum sentence for the offense. If the court imposes a prison term of one year or less, the court must designate the supervised release term, which may be up to 3 or 5 years depending on the maximum sentence for the offense.”
9. In section 9.4, the example is modified to incorporate the amended rule articulated in section 2.2.2.

## Appendix A

10. The redundant entry for “RSP” is removed from the list of common offenses in Master Group 9 and replaced by “Fraud.”

## Appendix B

11. The Drug Grid is amended to add a fourth Drug Group, to redistribute certain drug offenses within the Grid and to alter the sentencing options for two of the boxes in Drug Group 2. Further discussion of this amendment is found in Chapter Five, Section II.

## Appendix C and Appendix C-I

12. The legend is amended to add the following entries: “‘V’ or ‘D’ in the Violent/Dangerous column means a crime of violence pursuant to D.C. Code § 22-4501(1) or a dangerous crime pursuant to D.C. Code § 22-4501(2)” and “‘w/a’ means an offense subject to D.C. Code § 22-4502 imposing additional penalties for committing a crime of violence while armed. See *Hager v. United States*, 791 A.2d 911 (D.C. 2002).”

13. The following footnote is removed: “The Sentencing Reform Act did not go into effect until 4:59 p.m., August 11, 2000 although by its terms it was to go into effect at 12:01 a.m., August 5, 2000. If the defendant does not assert an ex post facto challenge to being sentenced under the new law this chart may be used for any offense that occurred on or after August 5, 2000.”
14. The entry for Cruelty to Children in the first degree adds a “V” in the Violent/Dangerous column.
15. The entry for Committing a Felony While on Release is corrected to remove the offense severity ranking and designate it as an enhancement.
16. The entries for the following offenses are revised to reflect a misdemeanor/felony value threshold of \$1,000+:
  - Credit Card Fraud
  - Destruction of Property
  - Fraud (1° and 2°)
  - Receiving Stolen Property
  - Insurance Fraud (1° and 2°)
  - Tampering with VIN
17. The following entries are reincorporated into Appendix C and C-I:
 

• Detaining an individual in disorderly house for debt there contracted (§ 22-2709)	Master Group 9
• Procuring for house of prostitution (§ 22-2710)	Master Group 9
• Procuring for 3 <sup>rd</sup> persons (§ 22-2711)	Master Group 9
• Operating house of prostitution (§ 22-2712)	Master Group 9
• Keeping bawdy or disorderly houses (§ 22-2722)	Master Group 9

#### Appendix D

18. This appendix is updated and revised.

#### Appendix H

19. The Repeat Offender Provisions for § 22-1804 (a) have been modified to state, “1 prior like offense” and “2 or more prior like offenses.”
20. Committing a Felony While on Release is added to the list of Other Enhancements.



## Miscellaneous Guidelines Policies

The Commission ratified a new policy for scoring out-of-District offenses for defendants who were under the age of 18 at the time of their prior offense (effective June 21, 2011). This new rule was designed to fill a void in the prior standards for scoring out-of-District offenses and to reflect the specific guiding principles of the District's prosecutorial and sentencing policies pertaining to juvenile offenders.

*If the defendant's out-of-District conviction was for an offense that was committed when he or she was under 18 years of age, the following procedures govern whether the conviction should be scored as an adult conviction or a juvenile adjudication in the criminal history score:*

- *A prior conviction where the defendant was less than 15 years of age at the time the offense was committed is scored as a juvenile adjudication.*
- *A prior conviction where the defendant was 15 years of age or older at the time the offense was committed is scored as a juvenile adjudication unless the court finds by a preponderance of the evidence that a judicial hearing was conducted in the out-of-District jurisdiction determining that the case would be transferred to or retained in adult court.<sup>7</sup>*
- *However, any prior conviction comparable to murder, first degree sexual abuse, robbery while armed (Firearm), or assault with intent to commit any of these offenses where the defendant was 16 years of age or older at the time the offense was committed is scored as an adult conviction.*

*Note: Under the last provision, a prior out-of-District conviction for armed robbery or robbery with a weapon is scored as an adult conviction unless the defendant can show by a preponderance of the evidence that the weapon associated with the conviction was not a firearm, in which case the armed robbery should be scored as a juvenile adjudication. In other words, there is a rebuttable presumption that the weapon involved was a firearm unless proven otherwise.*

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<sup>7</sup> This might be a hearing to transfer the juvenile to adult court or a "reverse transfer" hearing to determine if the juvenile, initially charged in adult court, should be "transferred back" to juvenile court. See e.g., D.C. Code § 16-2307. The burden would be on the government to show by a preponderance of the evidence that a transfer or reverse transfer hearing had occurred in the other jurisdiction and the case was transferred from juvenile court to adult court or kept in adult court.

*If the pre-sentence report writer cannot confirm the weapon used in the armed robbery, he or she should post an asterisk or otherwise highlight the scoring for this offense and note “presumed firearm otherwise unknown” in the pre-sentence report to alert the parties of this rebuttable presumption.*

B. Offenses Ranked in 2011

- Engaging in Animal Fighting (§ 22-1001(d)) Master Group 9
- Telephone Solicitation Fraud  
(§ 22-3226.06 (a); § 22-3226.10) Master Group 9
- Obstructing Service of a Drug Search Warrant  
(§ 48.921.02 (n)) Master Group 9
- Selling, Transferring, Distributing Firearm, Destructive  
Device or Ammunition to Persons Under 18  
(§ 7-2507.06 (1)) Master Group 7
- Assault with a Intent to Commit Mayhem While Armed  
(§ 22-402, 22-4502) Master Group 5
- Assault with Intent to Commit Any Other Felony  
While Armed (§§ 22-403, 22-4502) Master Group 5
- Cruelty to Children 1° While Armed  
(§§ 22-1101(a), 22-4502) Master Group 5
- Human Trafficking—Forced Labor (§ 22-1832) Master Group 5
- Attempt Human Trafficking—Forced Labor  
(§§ 22-1832, 22-1837) Master Group 7
- Human Trafficking—Labor or Commercial Sex Acts  
(§ 22-1833) Master Group 5
- Attempt Human Trafficking—Labor or Commercial  
Sex Acts (§§ 22-1833-22-1837) Master Group 7

• Human Tracking—Sex Trafficking of Children (§ 22-1834)	Master Group 5
• Attempt Human Trafficking—Sex Trafficking of Children (§§ 22-1834, 22-1837)	Master Group 7
• Human Trafficking—Documents (§§ 22-1835)	Master Group 8
• Attempt Human Trafficking—Documents (§§ 22-1835, 22-1837)	Master Group 9
• Human Trafficking—Benefitting Financially (§§ 22-1836, 22-1837)	Same as principal
• Attempt Human Trafficking—Benefitting Financially (§§ 22-1836, 22-1837)	Same as principal
• Human Trafficking—Enhancement (§§ 22-1837)	1½ x the term
• Possession of Liquid PCP (§ 48-904.01(d)(2))	Drug Group 3
• First Degree Sexual Abuse of a Secondary Education Student (§ 22-3009.03)	Master Group 7
• Attempt First Degree Sexual Abuse of a Secondary Education Student (§§ 22-3009.03, 22-3018)	Master Group 8
• Second Degree Sexual Abuse of a Secondary Education Student (§ 22-3009.04)	Master Group 8
• Attempt Second Degree Sexual Abuse of a Secondary Education Student (§§ 22-3009.04, 22-3018)	Master Group 9
• Third Degree Sexual Abuse While Armed (§§ 22-3004, 22-4502)	Master Group 6
• Attempt Third Degree Sexual Abuse While Armed (§§ 22-3004, 22-3018, 22-4502)	Master Group 7

The following offense ranking was removed:

- Armed Crime of Violence (not otherwise specified)  
(§ 22-4502)

### **III. Training and Education**

The Commission is available to provide training on the Guidelines. For example, the public is encouraged to contact the Commission with specific inquiries, as the Commission aims to ensure that resources are available to persons seeking information on the Guidelines. The Commission is also available, on request, to provide a more comprehensive overview of the Guidelines to criminal justice practitioners or interested community groups. Finally, an explanation of recent changes or significant developments to the Guidelines may prove helpful to the criminal justice community as well as the general public. The Commission and its staff have extensive experience applying the Guidelines in a wide variety of circumstances, and welcome the opportunity to share these experiences with all interested parties.

In 2011, the Commission and its staff conducted eight training sessions for the Superior Court, CSOSA, criminal justice practitioners, and new staff. Trainings are tailored to the specific needs of the recipients and can include presentations ranging from an in-depth discussion of the Guidelines' development, construction, and application to a brief overview of the Guidelines basic structure and rules. In addition, the Commission has expanded the resources on its website at <http://sentencing.dc.gov> to include FAQ section, historical sentencing information and publications, and a host of other materials that cover sentencing guidelines in the District.

## **CHAPTER THREE**

### **DATA SOURCES AND COLLECTION PRACTICES**

The Commission utilizes data from three sources when analyzing sentencing trends and determining judicial compliance with the Guidelines. The Superior Court directly provides the Commission with all offense, conviction, and sentencing related data, whereas CSOSA serves as the Commission's source for offender criminal history information. Data from these two sources are matched by court case number, are entered into the Commission's database, and are used for a variety of sentencing related analyses. In addition, the Commission compiles non-compliance data through surveys distributed to individual judges. Outlined below is a short summary of the three data sources and collection practices.

#### **I. Sentencing Data**

In 2004, the Commission contracted with Cross Current Corporation to develop the Sentencing Guidelines System (SGS) to streamline and automate the process through which the Commission receives sentencing data from the Superior Court. Sentencing Guidelines System is implemented as a web-based application through which the Commission captures information on sentences imposed, as well as other sentencing related data, and calculates the appropriate Guidelines sentencing range. Sentencing Guidelines System is an independent, internet technology-based system, and access to the application is provided through the secure DC JUSTIS network.

The SGS has a web service-based component that was developed to extract information from the Superior Court's CourtView system for use in the SGS environment via the JUSTIS database. Two triggers have been created in the JUSTIS database to direct data to the SGS web service when: (1) a plea or verdict is entered, or (2) a sentence is imposed. This feature of the SGS provides a daily electronic transfer of sentencing data from the the Superior Court to the Commission that is both timely and comprehensive. On a daily basis, sample cases of sentencing data transferred daily from the court are verified against data and official court documents found in CourtView as a measure of data quality control.

The initial SGS interface with JUSTIS was designed to transfer all new felony cases opened in CourtView. However, the Commission determined that historical conviction and sentencing information would enhance the SGS functionality and provide for more comprehensive research capabilities. To address the additional data needs, the Commission created a new trigger in JUSTIS to allow for a one-time transfer of all relevant felony cases sentenced within a specific date range available in CourtView. The new trigger transferred all historical felony sentencing information from January 16, 2006, providing the necessary data to undertake a future multi-year evaluation of the District's Voluntary Sentencing Guidelines.

The historic data transfer, combined with the daily transfer of sentencing data from the Superior Court, has enabled the Commission to develop a comprehensive sentencing database from which sentencing related research and guideline compliance analyses are conducted.

## **II. Criminal History Data**

CSOSA calculates a defendant's criminal history score when it prepares the Pre-Sentence Investigation Report. As part of this process, CSOSA completes the Sentencing Guideline Form (SGF), which contains all of a defendant's prior criminal history, including convictions both within and outside of the District of Columbia. Prior felony and most misdemeanor convictions, as well as recent juvenile adjudications, are included in each defendant's criminal history score. The completed Sentencing Guideline Forms are then forwarded to the Commission, at which time the offender's criminal history information is verified by case and count number and merged with the data from the Superior Court to create a complete sentencing record in the agency database.

Unlike the offense, charge, and sentencing data provided by the Superior Court, criminal history data is not yet automatically transferred from CSOSA to the Commission. Currently, the Commission is working with CSOSA to improve the data transfer process to ensure all criminal history information is received. Previously, CSOSA officers completed a Sentencing Guideline Form for each felony count in a Microsoft Word format; this document was then emailed to the Commission, and the Commission staff would manually enter the criminal history information into the database. This process was both staff intensive and had the potential to impact the accuracy of the data.

In late 2011, the Commission, in collaboration with CSOSA, began transitioning to a more effective system of collecting and sharing criminal history data. CSOSA officers now record criminal history data in a new electronic SGF. This electronic form features embedded automated data quality functions to address some of the deficiencies previously mentioned. The new SGF was developed with the following goals:

- To make the process of completing the forms more efficient.
- To implement an automated process to calculate, validate, and correct certain data fields.
- To incorporate mathematical computations automated in the form.
- To improve the quality of data by eliminating manual data entry.

The new SGF was created using Microsoft InfoPath software that is specifically designed for the creation of forms that automatically populate data fields and lead to more efficient data collection. InfoPath SGF incorporates an automated process to calculate, validate, and correct certain data fields. This represents an important upgrade from the previous form because the

validation and correction functionality ensures that critical data points are entered in a consistent and uniform manner, thereby reducing data entry errors. For example, if a user enters “2010CF3123” for the case number, the form will automatically convert the number to a standardized format, such as “2010CF3000123.” The new form is designed to perform the necessary mathematical calculations to determine an offender’s criminal history score. Eliminating mathematical errors is the most significant improvement in this process because accurate criminal history scores ensure that judges impose sentences within the appropriate Guidelines range. The final benefit of the InfoPath form is the elimination of manual data entry by the Commission’s staff, as the form directly extracts and converts the data into an Excel spreadsheet that can be directly imported into the Commission’s database.

The InfoPath SGF is a step forward in automating and streamlining criminal history data collection. The new form increases functionality, efficiency, and accuracy. However, the Commission views the new form as an interim solution in working towards the development of fully automated electronic transfer of criminal history data from CSOSA to the Commission.

### **III. Non-Compliance Data**

The Sentencing Guidelines grid is the first tool used to determine if a sentence is compliant; it sets forth the recommended type and length of sentence based on the offense of conviction and the offender’s criminal history. If a sentence initially appears to be non-compliant because it is outside the recommended sentencing range set forth in the Guidelines, further evaluation of the sentence is undertaken to determine if the sentence is compliant for other reasons. When a sentence for an individual count is determined to be initially non-compliant with the Guidelines, the Commission undertakes the following four steps:

**Step 1** - Determine if the non-compliant count runs concurrently with any other counts.

If the count runs concurrent to another, it must be determined if it is the longest sentence among the concurrent counts and if the Guidelines allow for a concurrent sentence.<sup>8</sup> This secondary determination is necessary because the longest sentence among concurrent counts determines the length of time a defendant will actually serve. If there are multiple concurrent counts and the longest sentence imposed is compliant, all remaining concurrent counts are considered compliant. If the longest count is non-compliant based on above rules, it is necessary to proceed to Step 2.

**Step 2** - Determine if the sentence is the result of a departure or a sentencing enhancement.

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<sup>8</sup> The Guidelines do not provide for concurrent sentences in certain situations, such as multiple crimes of violence. See DCVSG § 6.1.

If the record indicates a departure, the sentence is then verified to determine if a valid compliant departure was used. If the sentence remains non-compliant, it is necessary to check if a sentencing enhancement, which expands the Guideline range, was applied. If an enhancement applies, the sentence is reassessed to determine if it falls within the expanded sentencing range. If a applicable departure principle has not been identified, an enhancement provision does not apply, or the enhancement applied does not result in the sentence falling within the recommended Guideline range, it is necessary to proceed to Step 3.

**Step 3 - Verify the sentencing information with the Superior Court.**

The offense committed, the sentence length, and any other relevant information pertaining to compliance is checked against the Superior Court's electronic docket and case information system, CourtView, to ensure that the Commission has accurate data. CourtView has an inventory of scanned original court documents that contain both offense and sentencing information. After the accuracy of the data is rechecked against the scanned documents, the sentence is further reviewed for compliance. If the sentence remains non-compliant, it is necessary to proceed to Step 4.

**Step 4 - Contact sentencing judge to verify that the imposed sentence is in fact non-compliant.**

A new process for collecting information from judges regarding non-compliant sentences was implemented during the past year. This new process uses a "smart form" departure letter that is emailed to the judge responsible for the sentence. The judge or his or her staff reviews the sentence to confirm that it was correctly reported to the Commission and was intended to be a non-compliant sentence. The judge may also indicate that the sentencing information was incorrectly reported to the Commission or that the judge used a departure principle that had not been part of the initial transmission to the Commission. If the judge does not respond or confirms that he or she elected not to follow the applicable guideline, the sentence is then recorded as non-compliant in the agency database.

The Commission continues to implement processes and procedures that will improve both its access to data and the overall quality of the data used for the analysis of sentencing practices in the District. Ensuring the validity and reliability of the data will enable the Commission to monitor the application of the Guidelines more efficiently and to identify specific areas for potential modification or revision.



## **CHAPTER FOUR**

### **SENTENCING DATA ANALYSIS**

This chapter presents an analysis of felony sentences imposed in the District of Columbia during 2011 calendar year. This analysis examines sentencing patterns by sentence type, offense type, and offender characteristics to provide an overview of both the types and frequency of sentences imposed under the Guidelines.

The data set used for this analysis includes all felony sentences imposed and reported by the District of Columbia Superior Court between January 1 and December 31, 2011, regardless of when the initial conviction occurred. Through the SGS web application, offense, offender, and sentencing information is provided electronically by the Superior Court and supplemented with the offenders' criminal history information provided by CSOSA. In addition, CourtView, the Superior Court's web application, was used to access additional offense and sentencing information when needed.

Included in this chapter is an analysis of the type of sentences imposed for various offense categories, comparison of sentences for drug and non-drug offenses by case and count, and an overview of offender characteristics.

When analyzing sentencing patterns, it is important to examine sentences imposed at both the case and count level. A single felony case can involve several individual felony counts, thus there are more counts than cases in the analysis. In addition, a sentence imposed for a multiple count case can look very different from a sentence imposed for a single count case, depending on whether the separate counts are sentenced consecutive to or concurrently with each other. This chapter includes both case-level and count-level analysis to provide a more comprehensive examination of sentencing trends. Analysis at the count level provides an overview of criminal activity resulting in a conviction and sentence imposed for a single offense. When a case level analysis is undertaken it is based on the offense classification for the count within the case receiving the longest sentence.

## **I. Sentencing Structure**

Under the District's Sentencing Guidelines, the court may impose several types of sentences depending on both the severity of the offense and the criminal history of the offender. The sentences imposed may include a period of incarceration, a short or long split sentence,<sup>9</sup> or a term of probation without a period of incarceration.

The Sentencing Guidelines utilize two grids – the Master Grid and the Drug Grid. The Master Grid includes all non-drug felony offenses ranked within nine offense severity groups with Master Group One (M1) representing the most serious and M9 the least serious offenses. The Drug Grid, following the same structure as the Master Grid, includes four offense severity groups with D1 representing the most serious drug offenses and D4 the least serious. The offense ranking on both grids was established by experts within the criminal justice system during the development of the Guidelines and are intended to reflect the seriousness and degree of harm associated with each felony offense. The range of offenses classified at any specific offense severity groups can vary widely since elements of an offense and criminal behavior associated with a specific offense can also vary widely.

## **II. Sentences Imposed in 2011**

In 2011, there were 2,855 felony cases sentenced resulting in 3,959 felony counts reported to the Commission. This total includes sentences imposed for probation revocations,<sup>10</sup> which accounted for 226 cases resulting in 255 counts. Of all cases sentenced, 2,372 were single count cases whereas 483 cases involved multiple counts.

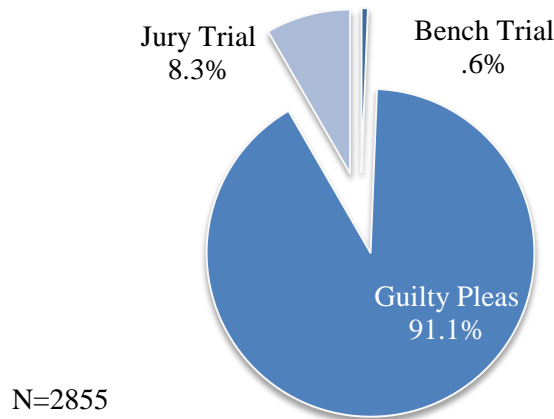
More than 90% of all felony cases were disposed of through guilty pleas. Jury trials accounted for 8.3% of the dispositions, and bench trials represented only 0.6% of all felonies sentenced in 2011.

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<sup>9</sup> A short-split sentence is a prison sentence in which the court suspends execution of all but six months or less -- but not all -- of that sentence, and imposes up to 5 years' probation to follow a period of incarceration. Similarly, a long split sentence is one where the court imposes a prison sentence and suspends execution of some of the sentence but requires the defendant serve longer than six months incarceration and then places the defendant on probation for a period of up to five years. A long split sentence is compliant under the guidelines in every box if the prison term to be served is at least as long as the minimum prison term in that box.

<sup>10</sup> Our current data does not provide information about the original sentence imposed when a probation revocation occurs or information on the reasons for the probation revocation. In the future the Commission intends to capture this information with its new data system which is currently in the design phase.

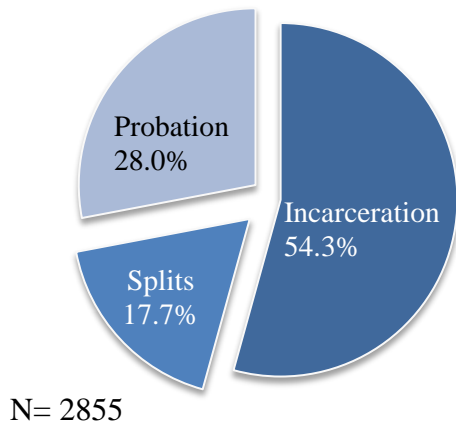
**Figure 1: Types of Dispositions in 2011, by Case**



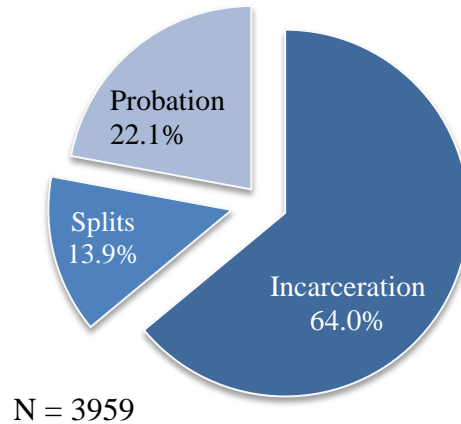
#### A. Sentence Type

The Voluntary Sentencing Guidelines provide for the imposition of three types of sentences for felony offenses – incarceration, split sentence,<sup>11</sup> or probation. Split sentences include both short and long splits sentences.<sup>12</sup> As seen in Figures 2a and 2b, the 2011 data collected by the Commission indicate that incarceration sentences (1,550 by case and 2,533 by count) represent the largest number of sentences imposed, followed by probation sentences (799 by case and 874 by count) and then by split sentences (506 by case and 552 by count).

**Figure 2a: Sentence Type by Case**



**Figure 2b: Sentence Type by Count**



The high incarceration rate may be explained by the fact that under the Sentencing Guidelines, a period of incarceration may be imposed for any felony conviction, whereas probation and short-

<sup>11</sup> A split sentence involves a period of incarceration followed by a period of probation.

<sup>12</sup> See footnote 9 on pg. 25 for the definition of short and long split sentences.

split sentences are restricted to specific boxes on both grids. Additionally, mandatory minimum sentencing provisions apply to some violent and serious offenses. The Guidelines also call for incarceration sentences for chronic offenders convicted of less serious crimes but whose extensive criminal history rules out a probation or short-split sentence.

Although incarceration sentences exceed split sentences and probation when measured by cases and by counts, the percentage of incarceration sentences was higher across all counts than across all cases. However, the opposite trend was true for split sentences and probation. This indicates that a greater proportion of counts in multiple count cases were sentenced to a period of incarceration than counts in single count cases.<sup>13</sup> This finding is not surprising because in a multi-count case, once the judge imposes a sentence of incarceration on one count, it is less likely that a judge would impose a sentence of probation on a separate count in the same case.

## B. Drug and Non-Drug Offenses

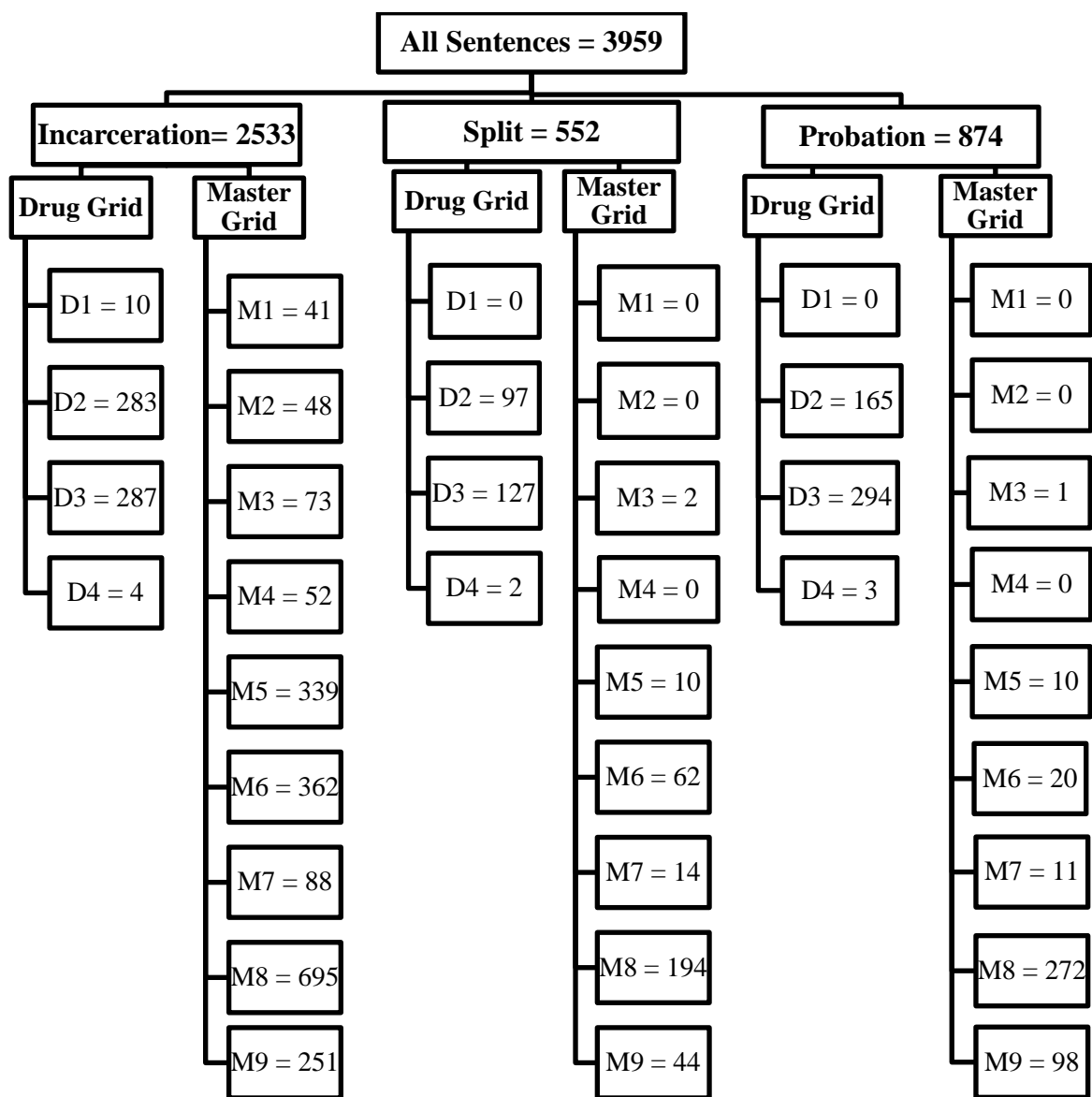
Figure 3 shows the distribution of all drug and non-drug counts based upon the type of sentence imposed (incarceration, split sentence, and probation) and the offense severity group of the conviction. As mentioned earlier,<sup>14</sup> the Guidelines divide felony charges into the Master Grid (from M1 to M9) and the Drug Grid (from D1 to D4). It should be noted that D4 was not established until June, 14, 2011, which explains the relatively low number of sentences at that level in 2011.

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<sup>13</sup> An incarceration sentence was given in 83.1% of all counts in multiple count cases, but only 48.3% in all single count cases.

<sup>14</sup> See p. 25.

**Figure 3: Sentence Types by Severity Groups**



Of all the non-drug sentences, M8, which consists of relatively less severe non-drug felonies, had the highest number of sentences imposed (695 incarceration sentences, 194 split sentences, and 272 probation sentences); among drug sentences, the majority of sentences imposed fell in D3, also consisting relatively less severe drug felonies (287 incarceration sentences, 127 split sentences, 294 probation sentences).

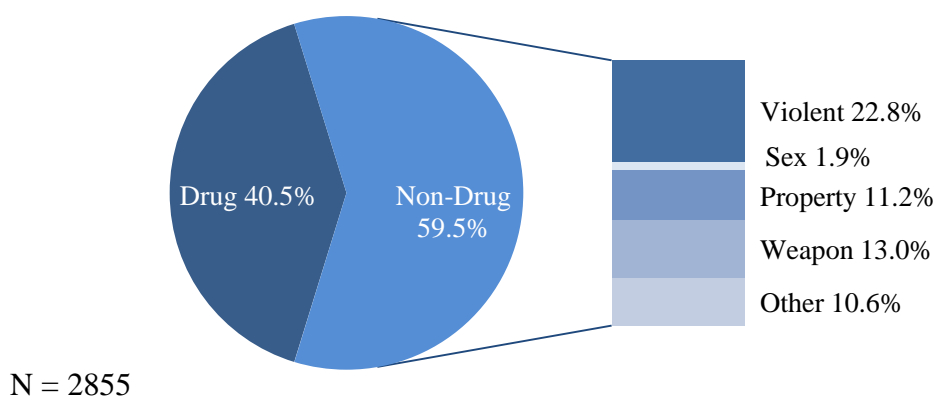
### C. Classification of Offense Categories

Since drug offenses made up a large percentage of the total felonies in the District, all offenses have been categorized as either a drug or non-drug offense. Non-drug offenses, which

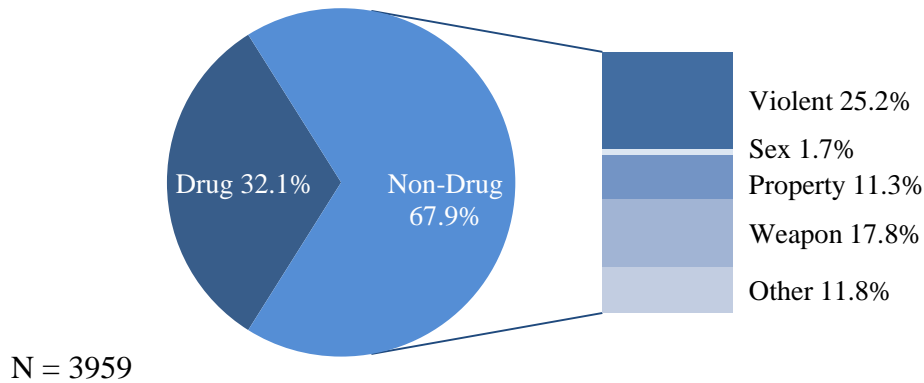
comprised 59.5% of total felony cases and 67.9% of total felony counts, have been further subdivided into five offense categories to provide an in-depth examination of the types of offenses sentenced. Listed below are the offense categories and the most common offenses within each category:

- Drug - Distribution or Possession with Intent to Distribute a Controlled Substance Attempted Distribution or Attempted Possession with Intent to Distribute a Controlled Substance, and Drug Offenses While Armed.
- Non - Drug
  - Violent – Armed and Unarmed First Degree Murder, Second Degree Murder, Armed and Unarmed Robbery, Assault with a Deadly Weapon, Aggravated Assault, Carjacking and Kidnapping;
  - Sex – all degrees of Sex Abuse and Child Sex Abuse, and prostitution related crimes;
  - Property – Arson, First Degree Burglary, Second Degree Burglary, First Degree Theft, Receiving Stolen Property, and Unauthorized Use of a Vehicle;
  - Weapon – Carrying a Pistol without a License, Unlawful Possession of a Firearm (Felon in Possession of a Firearm), and Possession of a Firearm During a Crime of Violence; and
  - Other – Escape, Fleeing Law Enforcement, Obstruction of Justice, and Bail Reform Act violations.

**Figure 4a: Offense Type - By Case**



**Figure 4b: Offense Type - By Count**

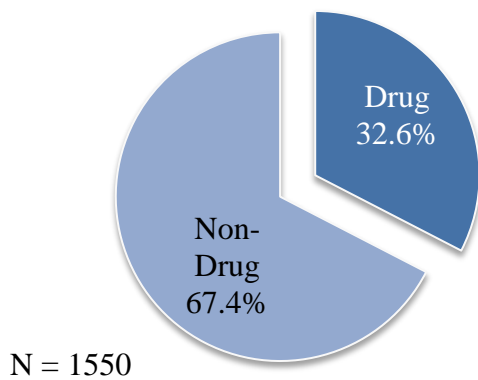


As displayed in Figures 4a and 4b, drug offenses accounted for the highest percentage (40.5% by case and 32.1% by count) of felony offenses sentenced in 2011, followed by violent offenses (22.8% by case and 25.2% by count). Sex offenses were the least common, representing less than 2% of all offenses sentenced by case and count.

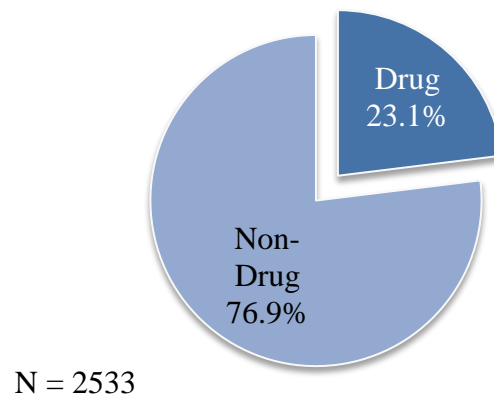
#### D. Sentence Types Imposed on Drug and Non-Drug Offenses

##### 1. Incarceration Sentences

**Figure 5a: Drug and Non-Drug Incarceration Sentences, by Case**



**Figure 5b: Drug and Non-Drug Incarceration Sentences, by Count**



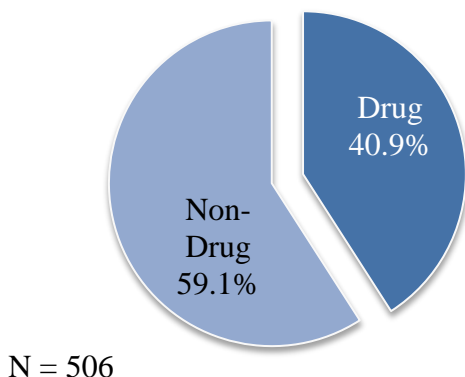
In 2011, non-drug offenders (67.4% by case and 76.9% by count) received a higher percentage of incarceration sentences than drug offenders (32.6% by case and 23.1% by count). Among the non-drug offense categories, violent offenses<sup>15</sup> were the most likely to be sentenced to a period of incarceration. This is to be expected because almost all of the crimes classified as violent

<sup>15</sup> See p.29 for the list of specific offenses included in the violent offense category.

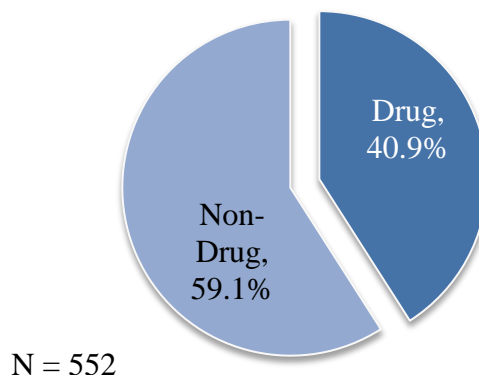
offenses are ranked higher on the Master Grid where split-sentences and probation only sentences are not recommended. These offenses also involve more serious criminal behavior and are more likely to be subject to a mandatory minimum sentencing provision.

## 2. Split Sentences

**Figure 6a: Drug and Non-Drug Split Sentences, by Case**



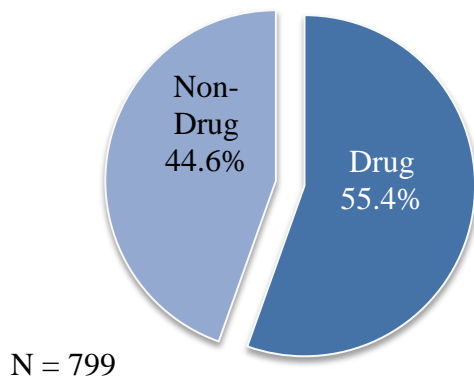
**Figure 6b: Drug and Non-Drug Split Sentences, by Count**



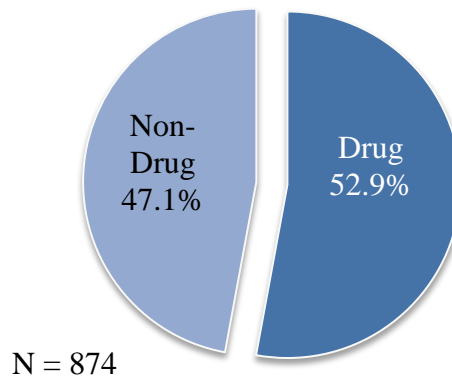
The data show that the percentage distribution of drug and non-drug offenses that received a split sentence was the same on the case level as well as count level. Approximately 20% more split sentences were imposed for non-drug offenses than for drug offenses, which is similar to the pattern found with incarceration sentences. However when the percentage of split sentences imposed for drug offenses (40.9% by both, case and count) and violent offenses (22.3% by both, case and count) are compared, the results are opposite of the pattern shown for incarceration sentences.

## 3. Probation Sentences

**Figure 7a: Drug and Non-Drug Probation Sentences, by Case**



**Figure 7b: Drug and Non-Drug Probation Sentences, by Count**

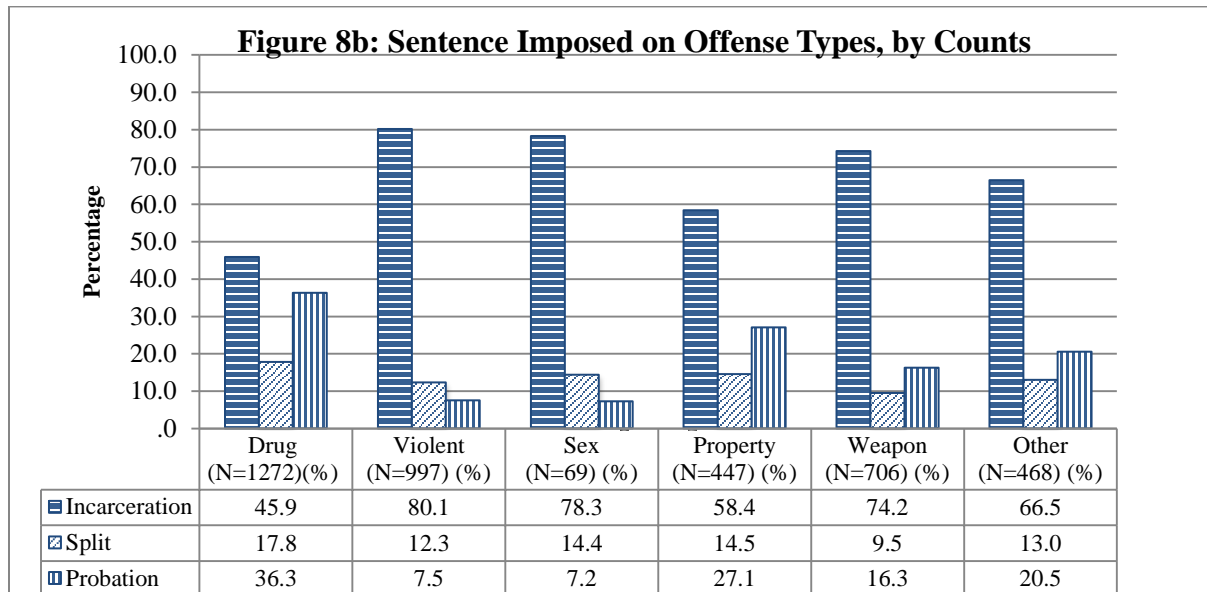
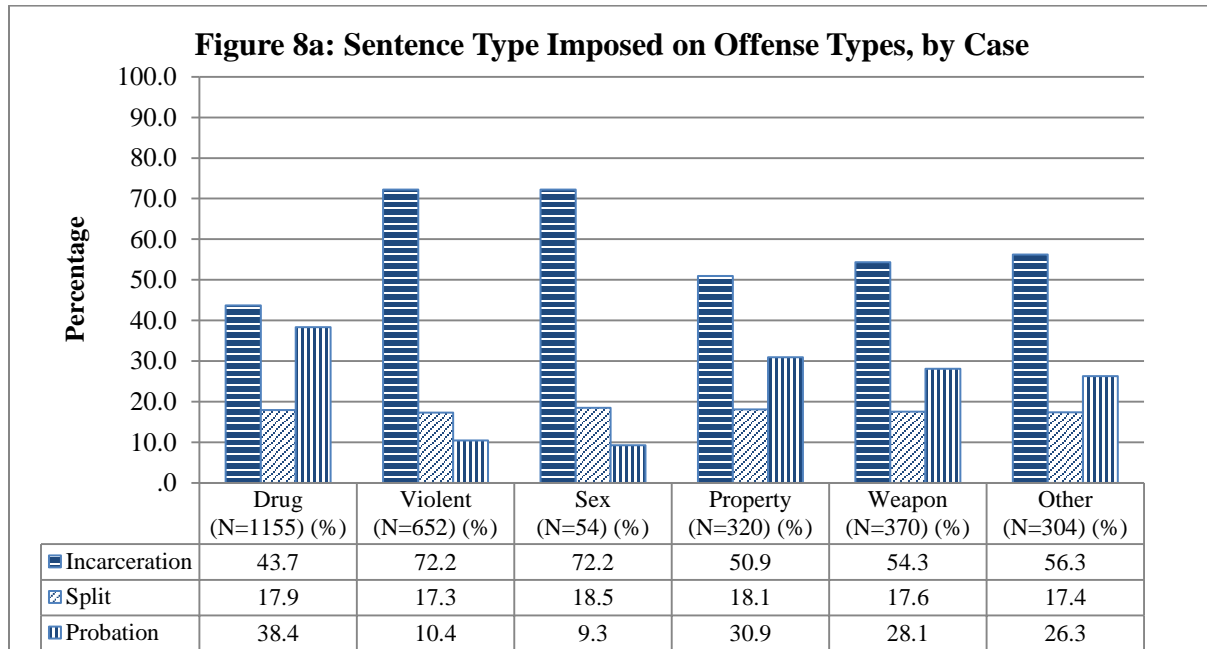




In reviewing probation sentences in the aggregate, the percentage difference between drug and non-drug offenses was not as significant as seen with incarceration and split sentences. However, when analyzing individual offense categories - drugs, violent, sex, property, weapons and other - there was a notable difference between the percentage of drug offenses and percentages non-drug offense categories that received a term of probation. Less than 14% of property, weapons, violent, sex and other offense counts and cases received a probation sentence compared to 52.9% of drug offense counts and 55.4% of drug cases. Of the non-drug offense categories, property offenses were the most common offense type to receive probation by count, but weapons offenses were the most common offenses by case, primarily due to the large number of weapons offenses involving Carrying Dangerous Weapon/Carrying a Pistol Without a License ranked as a M8 for which probation is a recommended Guidelines sentence. The higher percentage of drug offenses receiving probation is due in part to the structure of the Drug Grid which has considerably more grid boxes that permit the imposition of a probation sentence. In addition, because drug offenses do not generally involve violent behavior, probation is more often considered an appropriate punishment option.

### E. Type of sentence imposed across offense types

Figures 8a and 8b examine the type of sentence imposed for the different offense types by case and count, respectively.



Incarceration represented the most frequent type of sentence imposed across all offense categories. However, there were significant variations in the incarceration rate among the different offense categories. In contrast, there was negligible variance between the percentages of split sentences by case, and insignificant differences by count. This indicates that all offenses

were almost equally likely to receive a split sentence when criminal history was held constant. When looking at probation sentences, violent and sex offenses were considerably less likely to receive probation than other offense categories. As stated previously,<sup>16</sup> violent and sex offenses are more likely to involve serious criminal behavior or be subject to statutory mandatory minimum sentencing provisions; thus it follows that probation was rare among these specific offense categories.

When comparing the rate of incarceration across different offense types, drug offenses were the least likely (43.7% by case and 45.9 % by count) to receive incarceration sentences compared to non-drug offenses. As anticipated, the opposite trend was found among violent and sex offenses. Given the serious nature of these offenses, they demonstrated the highest incarceration rates and the lowest probation rates. Split sentences were imposed almost equally among all offense categories by case, with the “Other” offense category showing the lowest percentage by cases at 17.3%. A relatively high probation rate (30.9% by case and 27.1% by count) was found among property offenses. Theft offenses, ranked as a M8 offense or lower on the Master Grid, accounted for 45.6% by case and 43% by count of all property offenses sentenced last year.

#### F. Type of Sentence Imposed across Drug Types

Table 1 below shows the distribution of incarceration, split and probation sentences imposed on the various drug types identified.

**Table 1: Percentage of Sentence Imposed by Drug Type**

Sentence Type	Cocaine		PCP		Heroin		Marijuana		Other	
	Case (N=749) (%)	Count (N=811) (%)	Case (N=141) (%)	Count (N=155) (%)	Case (N=103) (%)	Count (N=111) (%)	Case (N=91) (%)	Count (N=111) (%)	Case (N=71) (%)	Count (N=84) (%)
Incarceration	44.7	46.2	31.2	34.8	56.3	55.9	46.2	52.3	36.6	41.7
Split	17.6	17.9	20.6	19.4	8.7	9.0	16.5	15.3	31.0	28.6
Probation	37.7	35.9	48.2	45.8	35.0	35.1	37.4	32.4	32.4	29.8
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

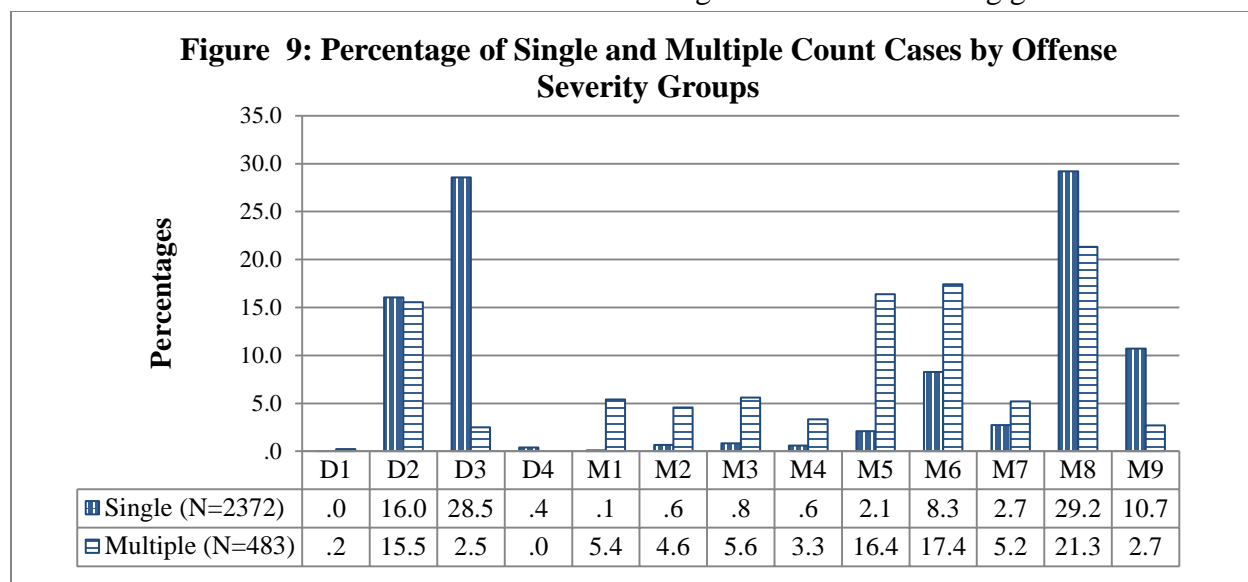
Cocaine was the most common drug among felony drug sentences in 2011, followed by PCP. However, of all drug types, heroin had the highest rate of incarceration. This can partly be explained by the relatively high average criminal history score of heroin offenders (2.5) as compared to all other drug types (between 1.6 and 1.9). Since the sentence an offender receives is a function of criminal history as well as the severity of the offense, heroin offenders were more

<sup>16</sup> See p. 30 – “Incarceration Sentences.”

likely to receive incarceration. Split sentences were most common among “Other” drug types, being 31% by case and 28.6% by count. The rate of incarceration exceeded the rate of all other sentence types for all drug types, except for PCP. The rate of probation for PCP offenses (48.2% by case and 45.8% by count) was higher than the rate of incarceration (31.2% by case and 34.8% by count) or split sentences (20.6% by case and 19.4% by count). Likewise, PCP had the highest rate of probation. This is partly due to the fact that the majority of PCP offenses (78% by case and 74.8% by count) fell in D3 which is a lower offense severity group with three of the five grid boxes probation eligible. In addition, defendants convicted of PCP related drug crimes had the lowest average criminal history score of 1.6, which also increases the likelihood of a probation sentence.

#### G. Comparison of Single and Multiple Count Cases

Of the 2,855 cases sentenced in 2011, 2,372 were single count and 483 were multiple count cases. The majority of single count cases are represented on the lower offense severity levels of both the Master and Drug Grid, with D3 and M8 accounting for almost 60% of all single count cases (See Figure 9). The primary offense types sentenced in those offense severity groups include Attempted PWID +Dist and property offenses. As would be expected, multiple count cases involved more serious crimes that are ranked higher on both sentencing grids.



Drug offenses accounted for 44.9% of single count cases, whereas, violent offenses represented 43.1% of multiple count cases. This finding may be due to the fact that drug offenses often involve a plea to a single count. However, violent crimes often result in trials and subsequent convictions involve multiple counts. Of all trials, 36.2% of the cases were for at least one violent offense.

Incarceration sentences were imposed in 78.7% of multiple count cases compared to 49.3% of single count cases. The reverse trend can be seen with probation sentences, with 31.6% of single count cases and 10.4% of multiple count cases receiving a term of probation. The percentage difference for split sentences was relatively close with 19.1% for single and 11% for multiple count cases.

### III. 2011 Felony Sentencing Demographics: Gender, Race, and Age of Offenders

In 2011, a total of 2,621 offenders were sentenced in 2,855 felony cases within the District. The difference is explained by the fact that 234 offenders were sentenced in more than one case during the year. Individual offenders are identified by their Metropolitan Police Department Identification number (PDID) for the purpose of this analysis.

Listed in Table 2 is a summary of offender demographics by offense categories,<sup>17</sup> which provides an overview of gender, race and age distributions.

**Table 2: Offender Demographics by Offense Categories**

Offense Type	No. of Cases	Gender		Race			Mean Age
		Female (N=305) (%)	Male (N=2283) (%)	Black (N=2395) (%)	White (N=88) (%)	Other (N=31) (%)	
Drug	1155	56.4	39.5	42.8	22.7	16.1	36.6
Non-Drug	1700	43.6	60.5	57.2	77.3	83.9	28.1
Total	2855	100.0	100.0	100.0	100.0	100.0	31.6
<b>Non-Drug Offenses</b>		N=133	N=1381	N=1371	N=68	N=26	
Violent	652	44.4	41.8	42.3	44.1	38.5	26.3
Sex	54	0.8	3.7	2.9	13.2	11.5	32.5
Property	320	17.3	19.8	19.2	22.1	23.1	29.3
Weapon	370	6.8	22.7	21.9	5.9	23.1	27.1
Other	304	30.8	12.0	13.7	14.7	3.8	32.2
Total	1700	100.0	100.0	100.0	100.0	100.0	28.1
<b>Drug</b>		N=172	N=902	N=1024	N=20	N=5	
PWID+Dist	674	33.7	63.2	59.0	60.0	20.0	34.6
While Armed	2	0.0	0.7	0.6	0.0	0.0	26.8
Attempt	479	66.3	36.1	40.4	40.0	80.0	39.6
Total	1155	100.0	100.0	100.0	100.0	100.0	36.6

<sup>17</sup> See p.29 for the classification of offense categories.

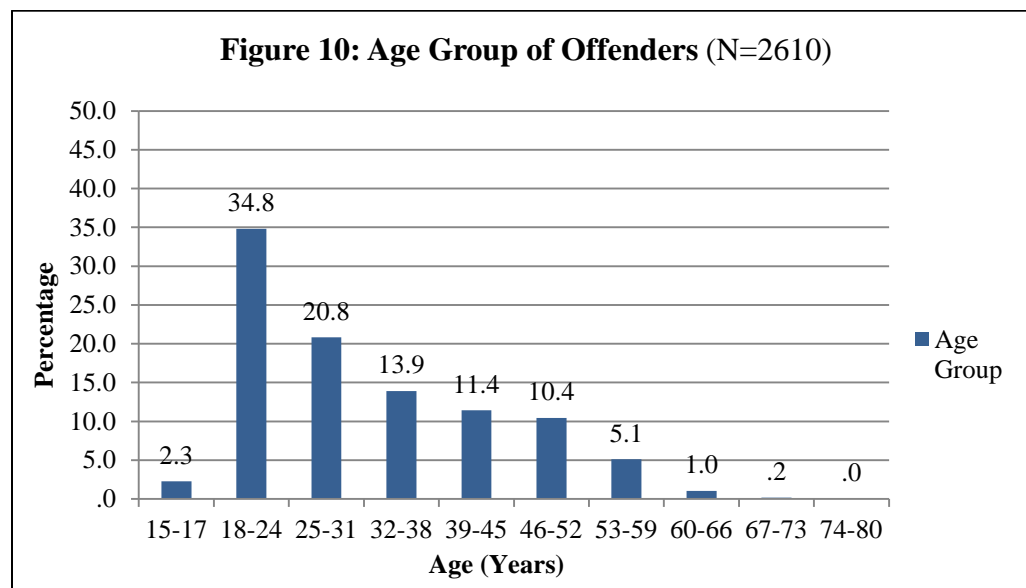
## A. Gender and Race of Offenders

Males represented the vast majority of offenders (88.2%) sentenced in 2011, with females accounting for only 11.8%.<sup>18</sup> The gender distribution of offenders remained fairly consistent with percentages reported in 2009 and 2010. One area in which gender appears to have an inverse effect is with drug offenses. When comparing the gender distribution for PWID +Dist and Attempted Drug offenses, females are more likely to be sentenced for Attempted Drug Offenses (66.3%) whereas, males are more likely, by almost the same percentage (63.2%), to be sentenced for PWID+Dist.

Racial distribution of offenders sentenced in the District also remained consistent with prior years with Black offenders accounting for approximately 95% of the offender population, Whites 3.5% and the “Other”<sup>19</sup> category representing 1.2%.<sup>20</sup>

## B. Age of Offenders

The age of each offender refers to their age at the time the offense was committed.



Again in 2011, the largest number of offenders fell within the 18-24 age group, while there was only one individual in the 74-80 age group. It should be noted that another 2.3% of offenders were between the ages of 15-17;<sup>21</sup> these defendants are juveniles, who were prosecuted as

<sup>18</sup> There were 33 offenders whose gender information was missing and not included in this analysis.

<sup>19</sup> The “Other” category includes Asians and Hispanics.

<sup>20</sup> There were 107 offenders whose race information was missing and not included in this analysis.

<sup>21</sup> Only one offender in this age group was 15 years of age.

adults.<sup>22</sup> The mean age of offenders sentenced in 2011 was 31.6 years, with a median age of 29 years and a mode of 18 years.<sup>23</sup>

### C. Offender Demographics by Type of Sentence Imposed

#### 1. Gender of Offenders

In 2011, the majority of offenders sentenced were males, representing 88.2% of all offenders. This percentage is consistent with previous years and nationwide trends. Males accounted for 91.5% of all offenders receiving incarceration sentences, and 78.9% of offenders sentenced to probation. Females accounted for 19.6% of total probation population, but only 7.6% of total incarceration population.

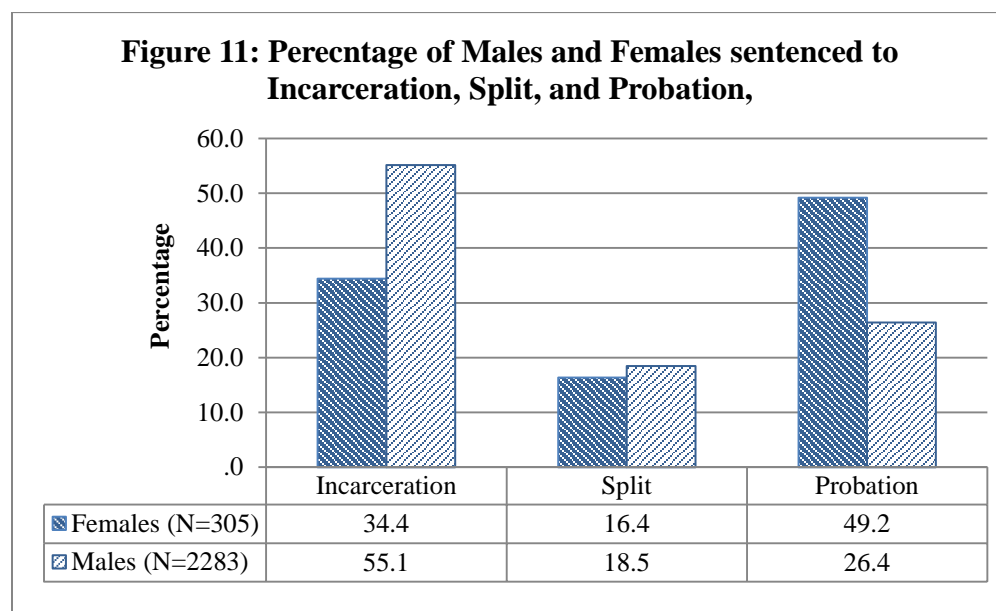


Figure 11 shows a comparison of type of sentence imposed by gender. When incarceration sentences are examined, 55.1% of all males received a term of incarceration compared to

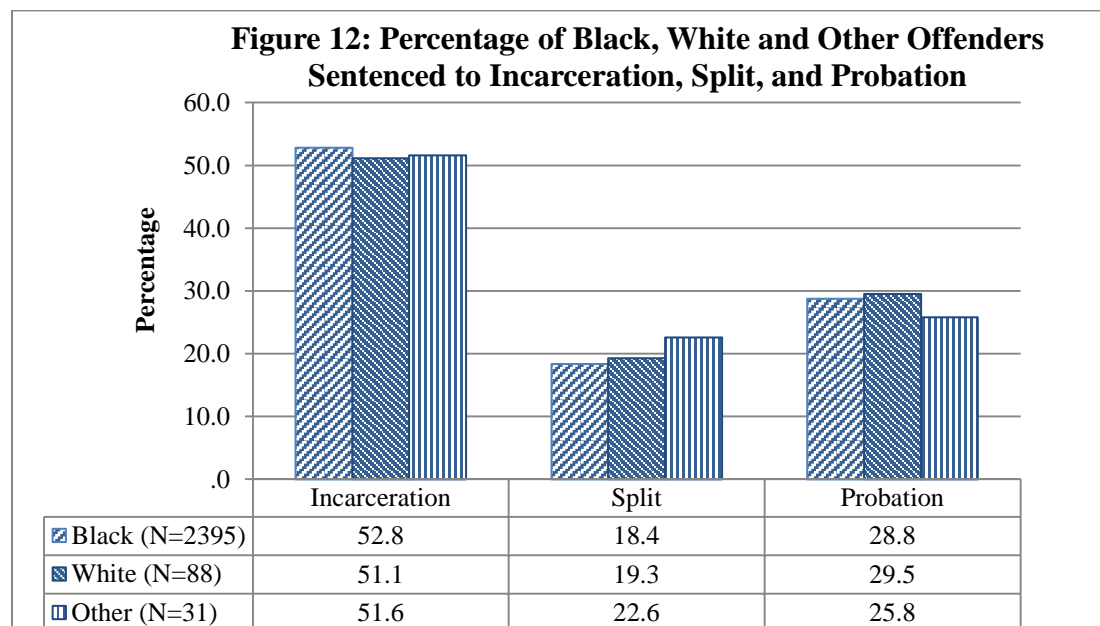
<sup>22</sup> In the District, individuals under the age of 18 at the time of offense are prosecuted as juveniles in the Family Court, unless the government elects to charge a person 16 years or older accused of “murder, first degree sexual abuse, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense, or ... any other offense properly joinable with such an offense,” as an adult in the Criminal Division of the Superior Court. D.C. Code § 16-2301(3). Further, the government may petition to have a juvenile aged 15 to 17 years old, charged with a felony offense, transferred from the Family Court to the Criminal Division. D.C. Code § 16-2307. Prior to the transfer, a Family Court judge must conduct a hearing and find that the transfer “is in the interest of the public welfare and protection of the public security and [that] there are no reasonable prospects for rehabilitation.” *Id.* § 16-2307(d)(2)(A). There is a rebuttable presumption that juveniles charged with “murder, first degree sexual abuse, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense” will be transferred to the Criminal Division. *Id.* § 2307(e-2).

<sup>23</sup> There were 15 offenders whose age was not recorded in the data transmitted to the Commission.

34.4% of all females. The difference between the proportion of males and females who received a split sentence was much smaller - 18.5% of all males and 16.4% of all females received split sentences. Approximately 49% of females sentenced in 2011 received a sentence of probation compared to 26.4% of all males. When criminal history is held constant, the data indicate that females were more likely to receive a term of probation than incarceration, while males were more likely to receive a term of incarceration than probation.

## 2. Race of Offenders

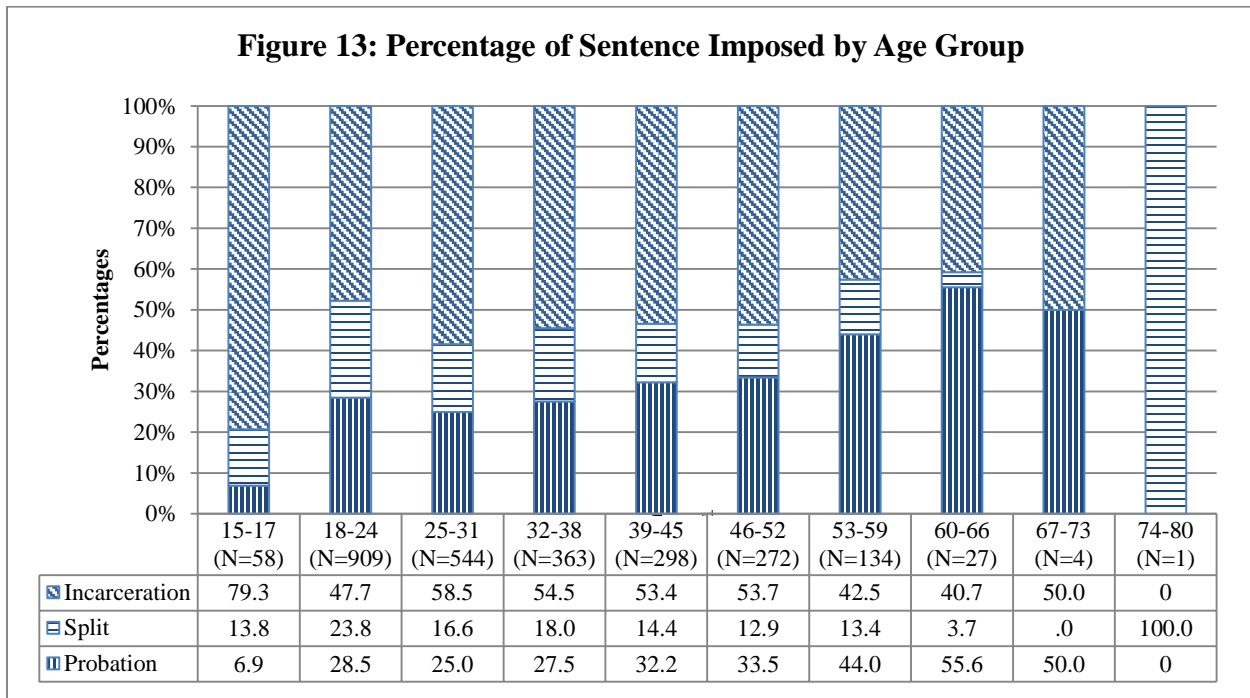
Black offenders represented 95.3% of all offenders and thus accounted for an overwhelming majority of all offenders sentenced to incarceration, split or probation sentences. Figure 12 displays the percentage of Black, White, and Other defendants who received a specific sentence type, including incarceration, split or probation sentences.



The data indicate that across all races incarceration was the most frequent type of sentence imposed, followed by probation, with split sentences being imposed the least frequently. The percentage of Black and White defendants receiving incarceration (52.8% Black, 51.1% White), split sentences (18.4% Black, 19.3% White) and probation (28.8% Black, 29.5% White) were very similar. Only a slightly higher percentage of Black defendants received incarceration sentences relative to White defendants; whereas a slightly higher percentage of White defendants received probation and split sentences than Black defendants when criminal history scores were held constant. The “Other” category (comprised of Hispanics and Asians) also had a higher rate of incarceration than other sentence types which is consistent with Black and White defendants.



### 3. Age of Offenders



By age, the largest number of offenders sentenced in the District were between 18-24 years old. Figure 13 demonstrates the difference between the types of sentences imposed on each age group. Although offenders in the age group 18-24 received the highest percentage of all sentences imposed during 2011, this specific age group was more likely to receive split sentences than any other age group. Based on the data analyzed, of all adult offenders, offenders aged 25-31 were the most likely to be sentenced to a period of incarceration and the least likely to receive a probation sentence, this in part can be explained by the higher criminal history scores for this age group.

When examining juveniles who were sentenced as adults, there were 58 offenders under the age of 18 sentenced for 126 counts in a total of 65 felony cases. In this specific age group, there were 34 single count cases and 31 multiple count cases, representing a much larger percentage number of multiple count cases than seen with their adult counterparts. All offenders were males, 91.4% were Black, 5.2% were White and 3.4% were in the “Other” category. This age group was sentenced primarily for violent crimes<sup>24</sup> (66.7% by case and 47.2% by count). None of the offenders were sentenced for a sex or drug offense. The Commission only receives sentencing data on juveniles sentenced as adults in the Criminal Division of Superior Court. Given the serious and violent nature of offenses committed by

<sup>24</sup> See p.29 for the classification of offense categories.

offenders in this age group, the rate of incarceration for this age group was correspondingly high at 79.3% compared to the overall incarceration rate of 52.5%.

All offenders aged 53 and older were more likely to receive a probation sentence rather than incarceration, with offenders from age group 60-66 showing the highest rate. It should be noted that 70.3% of this age group was sentenced for drug offenses. Since there were only five offenders aged 61 or older in 2011, the data cannot be analyzed further to provide any specific findings or trends for this group.

Table 3 below shows the mean, median and mode ages of the three sentence types imposed:

**Table 3: Age of Offenders**

	<b>Mean</b>	<b>Median</b>	<b>Mode</b>
Incarceration (N = 1373)	31.6	29.0	18
Split (N = 477)	29.1	25.0	18
Probation (N = 762)	33.4	31.0	18

#### **IV. Top Five Grouped Offenses<sup>25</sup>**

The top five grouped offenses<sup>26</sup> sentenced during 2011 account for more than 70% of all felony sentences imposed. Provided below is a summary of offense and offender information related to these specific grouped offenses.

##### **A. Possession with Intent to Distribute a Controlled Substance or Distribution of a Controlled Substance (PWID+Dist) Offenses**

Possession with Intent to Distribute a Controlled Substance or Distribution of a Controlled Substance was the most common offense sentenced in 2011, accounting for 674 cases and 775 counts. PWID+Dist Cocaine<sup>27</sup> was the most common drug type by case (63.8%) as well as counts (62.8%). All PWID+Dist convictions are ranked in Drug Group 2 (Schedule I or II narcotic/abusive drug) or Drug Group 3(all other types of drugs). The recommended guideline sentence imposed for PWID+Dist includes incarceration, split sentence or probation depending on the criminal history score. The average length of incarceration sentences imposed for this offense was 18.5 months.

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<sup>25</sup> See Appendix A for a list of all grouped offenses.

<sup>26</sup> The top five grouped offenses were identified based on further breakdown of the offense categories on p.29. These are not specific offenses but are groups of specific offenses of similar nature. See Appendix A for all offenses listed in the top five grouped offenses.

<sup>27</sup> Crack Cocaine is included under the definition of Cocaine.

The average criminal history score for PWID+Dist was 2.0, with a median score of 1.5, and a range from 0 to 9.75. However, modal criminal history score was 0, indicating that both the mean and median criminal history score is impacted by wide range of scores. Of the total number of sentences imposed for PWID+Dist, 43.5% by case and 46.6% by count were sentenced to a period of incarceration, 19.6% by case and 19.2% by count resulted in split sentences, and 36.9 % by case and 34.2% by count received a term of probation.

In 2011, there were 635 offenders sentenced for this offense. When race was examined, Black defendants comprised of 95.1% of all offenders for this offense; and across gender, males comprised 89.8% of PWID+Dist offenders. Offenders aged 25-31 represented a plurality (26.3%) of those sentenced for this offense. The mean age of 34.6 years for this specific grouped offense was slightly older than the average age of 31.6 years for all offenders sentenced.

#### B. Attempted Drug Offenses

There were 479 cases and 487 counts of Attempted Drug Offenses sentenced in 2011. Similar to PWID+Dist convictions, Cocaine was the most common drug type by case (67.9 %) as well as by count (65.7%) for this offense also. Attempted drug offenses fall within D3 or D4, for which all grid boxes except one are designated as probation or short-split eligible; however, a period of incarceration can be imposed in any grid box.

The average criminal history score of offenders sentenced for attempted drug offenses was 1.9, with a median score of 1.5, and a range of 0 to 8. Again, the modal criminal history score for Attempted Drug offenses was 0. The data indicate that there is virtually no difference between the criminal history scores for offenders sentenced for PWID+Dist and Attempted Drug offense given almost identical mean and modal scores for both offense groups. In addition, convictions in 99.8% of these cases and counts were the result of a plea. Overall, the percentage of incarceration (43.8% by case and 43.9% by count) and probation (40.5% by case and 40.5% count) sentences imposed for attempted drug offenses were virtually the same. The percentage of split sentences was significantly lower at 15.7% by case and 15.6% by count.

There were 443 offenders sentenced in the attempted drug offenses group. Although attempted drug offenses are similar in some aspects to PWID+Dist, males accounted for a smaller percentage of offenders sentenced for this offense category than PWID+Dist. Females on the other hand represented a larger percentage of all attempted drug offenders. Black offenders again comprised 97% of this group. A plurality (23%) of offenders from this category fell within an older age group – that of 39 to 45 years – with the mean age being 39.6 years, which is notably older than the average age of 31.6 years for offenders sentenced in 2011.

### C. Weapon Offenses

Weapon offenses accounted for sentences imposed in 370 cases and 706 counts during 2011. Weapon offenses are ranked on an array of guideline offense severity groups, ranging from M5 to M9 on the Master Grid, with recommended sentences ranging from probation to over ten years of incarceration depending on the offense severity level and the offender's criminal history score. The three most common weapons offenses included Possession of a Firearm during a Crime of Violence in M5, Carrying a Dangerous Weapon/Carrying a Pistol without License, and Unlawful Possession of a Pistol in M8.

The mean criminal history score for weapon offenses was 1.4, with a median score of 1, indicating a limited number of prior convictions. In 54.3% of all weapon cases the Court imposed an incarceration sentence, 17.5% of the cases resulted in a split sentence, and 28.1% of the cases received probation. The percentage of incarceration sentences for weapon offenses was much higher than that for PWID+Dist or attempted drug offenses, given the mandatory sentencing provisions for Possession of a Firearm during a Crime of Violence and repeat weapon offenders, in addition to the more serious nature of the offense. In multiple count weapon cases, a term of incarceration was imposed in 87.8% of the cases, compared to only 45.9% of single count cases receiving incarceration. The data indicates that multiple count weapon offenses were significantly more likely to receive an incarceration sentence given that weapon offenses are frequently accompanied a crime of violence.

Of the 331 defendants convicted of weapon offenses, 97.2% were males, 96.8% were Black, and 87.6% were Black males. The percentage of males in this offense group was much higher than the two grouped drug offenses previously described. Among the top five grouped offenses, females were least likely to be sentenced for a weapon offense. Of all females sentenced in 2011, only 3% were sentenced for this grouped offense. Offenders aged 18 to 24 comprised the plurality of offenders in this category (49.1 %), with a mean age of 27.1 years and a mode of 18 years.

### D. Assault Offenses

Assault, as a grouped offense, included the largest number of offenses, accounting for 272 cases and 489 counts sentenced in 2011. Like weapon offenses, assault cases involve a wide spectrum of criminal behavior and are ranked between offense severity groups, M3 and M7 on the Master Grid.

The average criminal history score for offenders sentenced for the grouped offense of assault was 1.6. Of all offenders sentenced for assault, 75.7% were sentenced to a term of incarceration,

15.8% received a split sentence and 8.5% received probation. The percentages of incarceration and split sentences were much higher for assault cases, and lower for probation when compared with the drug and weapon offenses. A sentence of incarceration was imposed almost equally whether the assault was in a single (71.8%) or multiple (85.7%) count case.

In 2011, 271 offenders were sentenced for assault. A smaller percentage of offenders sentenced for assault were Black (90.5 %) than for any other top five grouped offenses. Males comprised 86.1% of all assault cases sentenced and females 13.9%. Of all non-drug offenses, females were most likely to be sentenced for assault, with 12.1% of the female population being sentenced for this offense. As with weapons, the highest percentage of offenders (36.8%) was from the age group 18-24 and the mean age was 29.9 years and a mode of 18 years.

#### **E. Robbery Offenses**

In 2011, felony sentences were imposed for 281 cases and 369 counts of robbery. Of the total, only 11 cases and 23 counts involved sentences for armed or attempted armed robbery, the most serious form of robbery. All robbery offenses fall within Offense Severity Groups M5, M6 or M8 on the Master Grid. Split sentences and probation are permissible in M6 and M8 at the lowest level of criminal history, but incarceration is the only sentencing option permissible in M5.

The average criminal history score for robbery cases was 1.2, with a range of 0 to 9. As with other non-drug offenses in the top five offenses groupings, incarceration sentences (60.5 %) exceeded split sentences (24.2%) and probation (15.3 %) by a substantial amount.

There were 272 offenders sentenced for robbery in 2011, of which 96.6% were Black. Males represented 95.2% of the offenders sentenced for robbery, which represents a higher percentage of males than found in other top five grouped offenses. Consistent with findings for other non-drug offenses in the top five, offenders aged 18 to 24 represented the largest percentage (68.4%) of offenders who committed a robbery, with a mode age of 18 years and a mean age of 23 years, which is considerably younger than the average age of 31.6 for all offenders sentenced.

### **V. Conclusion**

The vast majority of sentences imposed during 2011 involved single count cases, with multiple count cases representing only 17% of the total number. More than 90% of felony cases were disposed of through guilty pleas. Overall, incarceration was the most frequent type of sentence imposed. However, when drug and non-drug offenses were compared, drug offenses were more likely to receive a probation sentence. Split sentences were the least frequent type of sentence imposed on both the Master and Drug grid.

When analyzing non-drug offenses by offense categories,<sup>28</sup> violent, sex and weapon offenses were most likely to receive an incarceration sentence, whereas, property offenses were primarily sentenced to probation. Weapon offenses and assaults were the two most common grouped non-drug offenses sentenced, accounting for 370 and 272 cases respectively. Offenders sentenced for non-drug offenses tended to be in their mid-20's, which is younger than the mean offender age of 31.6 years.

Sentences for drug offenses were dominated by PWID+Dist. This single offense accounted for 60.9% of all drug offenses sentenced in 2011. Cocaine was the most common drug involved in 63.8% of all drug counts followed by PCP at 12.2%. Heroin offenders had the highest criminal history score, thus the most likely to receive a term of imprisonment. The offenders sentenced for drug offenses tended to be older, with the average age of 34.6 years for PWID+Dist and 39.5 years for attempted PWID+Dist.

Although incarceration was the most frequent sentence type imposed, multiple count cases experienced an even higher percentage of incarceration at 78.7% compared to single count cases at 49.3%, reflecting the seriousness of offenses often involved in multiple count cases.

This overview of sentences closely parallels the recommended sentences set forth under the Sentencing Guidelines, which provide for non-incarceration sentences for lower level felonies that do not involve violence and incarceration sentences for serious and violent offenses. This sentencing structure promotes public safety while holding the offender accountable and providing for rehabilitation options when appropriate.

During 2011, 2,621 offenders were sentenced for felony offenses. Of that total 234 offenders were sentenced in more than one case. Males represented 88.2% of the offenders sentenced with females accounting for 11.8%, which is consistent with previous years. Approximately 95% of the offenders were Black, with Whites accounting for 3.5% and Others (Hispanic and Asian) 1.2%.

The age of offenders ranged from 15 to 75 years of age, with an overall average age of 31.6 years of age. However, the most frequent age category for offenders was 18 to 24, with an overall mode of 18 years of age. Males had a slightly younger mean age of 31.0 years compared to females whose mean age was 36.6 years. Offenders sentenced for violent offenses had a lower mean age (26 years) compared with offenders sentenced for drug offenses (36.7 years), highlighting the challenges the criminal justice system faces in dealing with youth violence and chronic substance abuse issues.

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<sup>28</sup> Offense categories include: Violent, Sex, Property, Weapon, and Other as defined on page 29.

Female offenders were sentenced most frequently for drug offenses, whereas the majority of males were sentenced for non-drug offenses. However, for non-drug offenses, the assault offense grouping represented the largest number of females (12.9%) sentenced. In addition, 49.2% of the females sentenced received probation compared to 26.4% of the males receiving probation sentences. The opposite trend is true for incarceration sentences. Of all males sentenced, 55.1% received a period of incarceration compared to 34.4% of all females sentenced. The difference between males and females receiving split sentences was not significant. The data would indicate that females were more likely to receive a term of probation than incarceration, while males were more likely to receive a term of incarceration than probation when criminal history is held constant.

## **CHAPTER FIVE**

### **COMPLIANCE WITH THE DISTRICT OF COLUMBIA VOLUNTARY SENTENCING GUIDELINES**

The Commission continually monitors and analyzes judicial compliance with the Voluntary Sentencing Guidelines as part of its overarching goal to promote fair and consistent sentencing practices in the District of Columbia. Fairness and consistency in sentencing ensure adequate punishment, reduce inequalities, and increase public confidence in the criminal justice system. Compliance with the Guidelines helps achieve this goal by reducing unwarranted disparities in sentencing because similar defendants, convicted of similar crimes, receive similar sentences. In addition, judicial compliance serves as a measure to review sentencing practices. In general, compliance with the Sentencing Guidelines in the District of Columbia has been, and remains, very high, consistently near or above 90 percent.<sup>29</sup>

#### **I. How Compliance is Defined by the Sentencing Guidelines**

Measuring compliance with the Sentencing Guidelines involves a comparison of the actual sentence imposed with the sentence recommended under the Guidelines. A sentence is considered compliant if it falls within the Guidelines compliant sentencing range. The Guidelines use two primary factors, the offense severity group and the defendant's prior criminal history score, to calculate a defendant's Guidelines compliant range for each felony offense.

The offense severity group for each felony offense is set forth in the Guidelines and does not change on a case-by-case basis. The Guidelines place every non-drug felony offense in the District of Columbia into one of nine offense severity groups (M1 to M9) based on its predetermined severity level (the more serious an offense, the lower the severity group number). Similarly, the Guidelines place every felony drug offense into one of four separate severity groups (D1 to D4).

Prior to sentencing, the Court Services and Offender Supervision Agency (CSOSA) calculates a defendant's criminal history score based upon each defendant's complete criminal history.<sup>30</sup> After amassing a defendant's criminal history, CSOSA calculates a numerical criminal history score for each defendant through the application of a series of Guideline rules. The score primarily accounts for the type, number, and severity of the defendant's prior convictions, as well as the length of time between the expiration of the offender's prior sentence and the

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<sup>29</sup> In 2009, the Commission reported that 88% of felony sentences were Guidelines compliant, in 2010, this percentage rose to 96%. This year, over 97% of felony sentences were Guidelines compliant.

<sup>30</sup> On rare occasions, such as when the court sentences the defendant immediately after conviction, CSOSA does not have the opportunity to produce a complete criminal history for a defendant.



commission of the instant offense. Once the criminal history score is calculated, the Guidelines place the score into one of five categories, A through E, with A representing the lowest criminal score category and E representing the highest.

Combining the offense severity group and the defendant's criminal history score on a grid reveals the defendant's Guidelines compliant sentencing range for each felony conviction. For non-drug felony offenses, the nine severity groups are displayed on the vertical axis of the Master Grid. The five criminal history score categories are located on the horizontal axis of the grid. Felony drug offenses are laid out on the Drug Grid in exactly the same manner. The intersection of a defendant's offense severity group and criminal history category on either the Master Grid or the Drug Grid identifies a grid box containing the defendant's Guidelines compliant sentencing range.

In addition to revealing the compliant sentencing range, each box on the Master Grid and the Drug Grid are shaded in one of three ways. The box shading determines what type of sentence a judge may impose under the Guidelines.

(1)	White/Unshaded (white)	-	Prison only
(2)	Dark Shaded (green)	-	Prison or Short-Split
(3)	Light Shaded (yellow)	-	Prison, Short-Split, or Probation

Of the 45 total boxes on the Master Grid, 35 are white/unshaded, "prison only" boxes,<sup>31</sup> four are dark shaded, short-split permissible boxes,<sup>32</sup> and six are light shaded, probation eligible boxes.<sup>33</sup> On the Drug Grid, six of the 20 boxes are white/unshaded, prison only boxes, four are dark shaded, short-split permissible boxes, and ten are light shaded, probation eligible boxes. The ranges within each box can be expanded by certain statutory sentencing enhancements. These enhancement provisions are based on such factors as the victim's status (e.g. senior citizen, bias-related), where the crime occurred (e.g. drug-free zone), whether or not the defendant is a repeat offender, or other aggravating factors.<sup>34</sup>

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<sup>31</sup> To impose a compliant "prison only" sentence, the court must impose a prison sentence that falls within the applicable Guidelines range. The court may suspend part of the defendant's sentence; however, the term of actual incarceration must still fall within the appropriate Guidelines range.

<sup>32</sup> To impose a compliant short-split sentence, the court must impose a prison sentence that falls within the applicable Guidelines range and suspend execution of all but six months or less -- but not all -- of that sentence, and impose a term of probation.

<sup>33</sup> To impose a compliant probation sentence, the court must impose a prison sentence that falls within the applicable Guidelines range, suspend execution of the entire sentence, and impose a term of probation.

<sup>34</sup> Statutory minimum and mandatory minimum sentencing provisions do not change a defendant's applicable sentencing range under the Guidelines. However, they may limit the court's discretion to impose a Guidelines compliant sentence within a particular box. An imposed sentence cannot be lower than the mandatory minimum even if lower sentences are otherwise available in the appropriate box.

## II. Departures from the Guidelines

Equally important to how the Guidelines handle similar defendants convicted of similar crimes is how it accounts for atypical cases. The structure of the Guidelines allows judges to “depart,” or sentence outside of the recommended Guidelines range, when it is necessary and appropriate to impose a sentence that protects public safety and reflects the atypical circumstances of a specific offense or defendant. The Guidelines provide 11 aggravating, or “upward,” departure principles that allow the sentencing judge to impose a compliant sentence above the applicable Guidelines range and ten mitigating, or “downward,” departure principles that allow the sentencing judge to impose a compliant sentence below the applicable Guidelines range. To better represent upward and downward departures in its analysis, the Commission has revised how it evaluates judicial compliance and, more specifically, compliant departures. Previously, sentences imposed were evaluated in two distinct groups: compliant sentences and non-compliant sentences. Compliant sentences consisted of sentences that fell within the designated grid box range, given a defendant’s conviction and criminal history score, as well as sentences outside of the Guidelines range when the defendant pled guilty under Rule 11(e)(1)(C) or when the judge cited a valid aggravating or mitigating departure principle. Sentences were deemed non-compliant only if they were outside of the appropriate sentencing range and either did not result from a Rule 11(e)(1)(C) plea or there was no applicable departure principal cited by the sentencing judge.

The Commission will continue to utilize the two general classifications, compliant and non-compliant, to evaluate overall judicial compliance. However, to gain a clearer understanding of the differences between different types of compliant sentences, all sentences will also be assigned to one of the following four categories:

- I. **In-the-Box Sentences** - the sentence falls within the appropriate sentence type (prison only, short-split, or probation) and sentence range given a defendant’s conviction and criminal history score. This includes instances where the box has been expanded due to an enhancement.
- II. **Rule 11(e)(1)(C) Sentences** - the defendant’s criminal history score was not requested from CSOSA or the sentence does not fall within the appropriate sentence type or sentence range given a defendant’s conviction and criminal history score; however, the defendant pled guilty under Criminal Rule 11(e)(1)(C).<sup>35</sup>
- III. **Compliant Departures** - the sentence does not fall within the appropriate sentence type or sentence range given a defendant’s conviction and criminal

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<sup>35</sup> Under Rule 11(e) (1) (C) the parties can agree on a guilty plea with a specific sentence or sentence range and if the judge accepts the plea, the judge is also bound by the parties’ agreement. It should be noted that Rule 11(e)(1)(C) cases that resulted in an in-the-box sentences were classified as a compliant in-the-box sentence.

history score; however, the judge cited a valid aggravating or mitigating departure principle.

- IV. **Non-Compliant Departures** - the sentence does not fall within the appropriate sentence type or sentence range given a defendant's conviction and criminal history score, and the judge does not cite a valid aggravating or mitigating departure principle.

Measuring compliance based on these four categories enables the Commission to better differentiate between a sentence that falls within the appropriate Guidelines range, a sentence that may fall outside of that range while still following the rules set forth in the Guidelines Manual, and a sentence where the presiding judge elected not to follow the Guidelines.

### **III. Data Reporting**

Determining judicial compliance with the Guidelines begins by identifying the appropriate sentencing range for every felony conviction in the District and comparing that to the actual sentence imposed by the sentencing judge. CSOSA and the Superior Court provide the data the Commission uses in analyzing compliance.

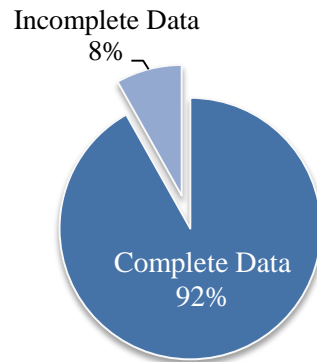
Similar to last year, the Commission continued to advance its data collection and validation processes with the goal of improving the quality of the compliance data reported. Through these advancements, approximately 250 sentences that initially appeared to be non-compliant departures were properly reclassified as compliant after the data set was reviewed.

Historically, the Commission validated sentencing data by mailing judges departure letters for every sentence that appeared non-compliant. These letters provided the sentencing judge the opportunity to identify inaccuracies in the data, such as an incorrectly recorded sentence, a modified criminal history score, or an unreported compliant departure, and/or explain their sentencing rationale. By undertaking a thorough and comprehensive review of the electronic court record for every case that initially appeared to be a non-compliant departure, the Commission reduced the number of departure letters sent to judges from approximately 300 in 2010 to approximately 100 in 2011. While the Commission continues to utilize departure letters (specifically, the new "Smart Form" departure letters discussed in Chapter Three), they are now reserved for non-compliant sentences, cases where the sentencing judge modified a defendant's criminal history score on the day of sentencing, or cases where what turned out to be a compliant departure was incorrectly recorded in the first instance.

Even with the progress, the Commission has made towards improving quality of sentencing information, data collection and management remain an area of continual improvement. In 2011, the Commission received complete sentencing data (consisting of a criminal history score, a

conviction charge, and a sentence) in 91.8% of all felony counts sentenced and reported by the Superior Court.<sup>36</sup> This high percentage is the result of unprecedented coordination and support from CSOSA.

**Figure 17: Percentage of Felony Counts With Complete Sentencing Data**



N = 3616

Incomplete sentencing data was the result of a missing criminal history score, a sealed case/sentencing record, or where the sentencing judge did not request a criminal history investigation and/or score calculation from CSOSA.<sup>37</sup> The Commission cannot measure Guidelines compliance in cases without a reported criminal history score, because the criminal history score is one of the two factors used to determine the in-the-box sentencing range. For example, a defendant with a minimal criminal history score (0-0.5) who is convicted of Robbery (M6) would have a Guidelines compliant range of 18-60 months with the option of a short-split or prison sentence. However, if the same defendant had a mid-range criminal history score (2-3.75), he or she would have a Guidelines compliant range of 30-72 months, in a prison only box. If the defendant received a 24-month sentence, without knowing the criminal history score, the Commission cannot evaluate judicial compliance. Therefore, the Commission calculated and analyzed compliance only for counts where complete sentencing data was available.

Moving forward, the Commission will continue to collaborate with CSOSA and other criminal justice agencies to improve upon its data collection and management systems to further reduce the number of cases lacking complete sentencing information.

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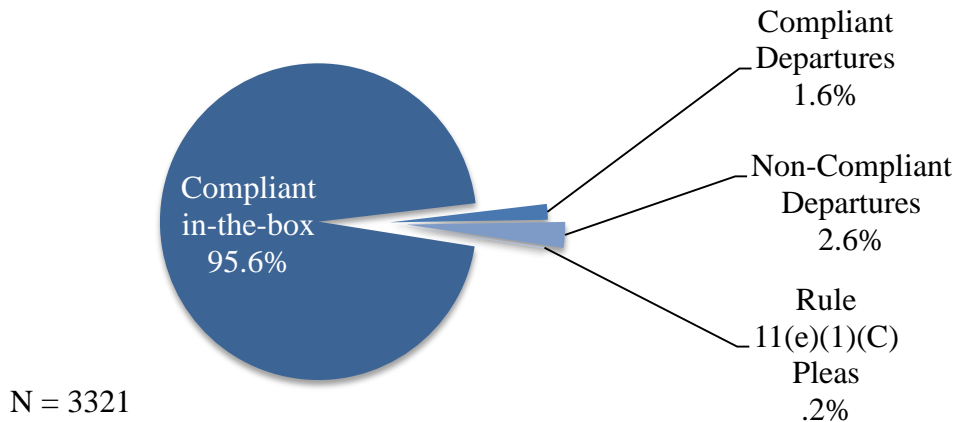
<sup>36</sup> For the purposes of analyzing compliance, the Commission has removed counts sentenced following probation revocation. Further, all compliance data was subject to additional validation and verified through an in-depth review of the court docket.

<sup>37</sup> In 46 of the 295 (16%) counts where the Commission did not receive a criminal history, the CourtView record noted that the Court did not request a criminal history from CSOSA.

#### IV. Compliance Analysis

Judicial compliance with the Sentencing Guidelines remains very high. The overall Guidelines compliance rate in 2011 was 97.4%.<sup>38</sup> Sentencing judges elected not to follow the Guidelines in less than three percent of all felony counts sentenced last year. Furthermore, more than 95% of all felony counts sentenced received compliant in-the-box sentences. Compliant departures accounted for less than two percent of all felony sentences and out-of-box Rule 11(e)(1)(C) sentences represented less than one percent of all felony counts sentenced.

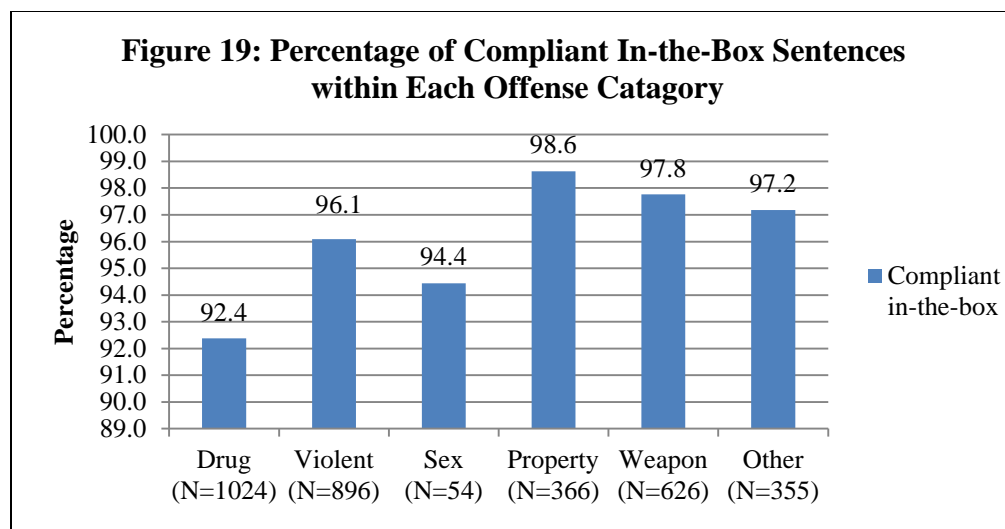
**Figure 18: Judicial Compliance Rate**



##### A. Compliant In-the-Box Sentences

Most offenses sentenced in 2011 resulted in compliant in-the-box sentences. In these cases, the sentencing judge followed the Guidelines recommendation to determine the sentence imposed. Figure 19 shows that violent, property, weapon, and “other” offenses received in-the-box sentences in over 96% of all cases where the criminal history score was reported to the Commission. Drug offenses was the only offense category to receive compliant in-the-box sentences in less than 93% of all counts sentenced.

<sup>38</sup> Note: some of the compliance percentages reported and discussed in this section may not total a 100 percent due to rounding.



## B. Compliant Departures

In 2011, 53 sentences were the result of compliant departures from the Guidelines. While limited in number, the Commission analyzes compliant departures in detail to understand the factors and circumstances considered by judges who elected not to impose an in-the-box sentence. All but three compliant departures were downward departures. In these 50 counts, the sentencing judge selected a mitigating departure reason and imposed a sentence below the in-the-box range for the defendant.

**Table 4: Departure Reasons by Severity Group**

Severity Group	Departure Reasons (N=53)									Total
	A1	A4	M4	M5	M6	M6 and M10	M7	M8	M10	
D2	0	0	0	1	4	0	1	1	9	16
D3	0	0	1	2	4	1	2	0	15	25
M2	1	0	0	0	0	0	1	0	0	2
M4	0	0	0	0	0	0	2	0	2	4
M6	0	1	0	0	0	0	0	0	0	1
M7	0	0	0	0	0	0	1	0	0	1
M8	0	0	0	0	2	0	1	0	0	3
M9	0	1	0	0	0	0	0	0	0	1
Total	1	2	1	3	10	1	8	1	24	53

As Table 4 shows, in 2011, judges utilized the following departure principles to impose compliant out-of-box sentences:

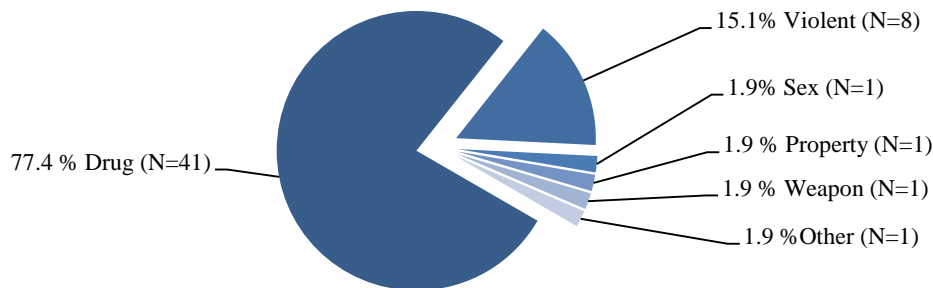
- A1 - There was deliberate cruelty or gratuitous violence inflicted upon a victim;
- A4 - The crime committed or attempted was substantially premeditated;

- M4 - The offense was principally accomplished by another, and the defendant manifested extreme caution or sincere concern for the victim;
- M5 - The defendant was induced by others to participate in the crime;
- M6 - The defendant could not appreciate the wrongfulness of his or her conduct;
- M7 - The defendant has provided substantial assistance to law enforcement;
- M8 - The defendant cannot be adequately protected or treated in prison; and
- M10 - Any other substantial and compelling basis, similar to those articulated in the Guidelines, to depart downward.

Of the departure principles used, only three were selected more than three times: M6 was used 10.5 times, M7 was used eight times, and M10 was used 24.5 times.<sup>39</sup> The M10 departures are particularly noteworthy because M10 is the “catch all” downward departure principle, and does not identify a specific reason for departing.

A majority of the compliant departures occurred in Drug Groups Two and Three.<sup>40</sup> Furthermore, all compliant departures on the Drug Grid were downward departures. Only 22.6% of compliant departures occurred in the sentencing of offenses located on the Master Grid.

**Figure 20: Percentage of Total Compliant Departures (N=53)**

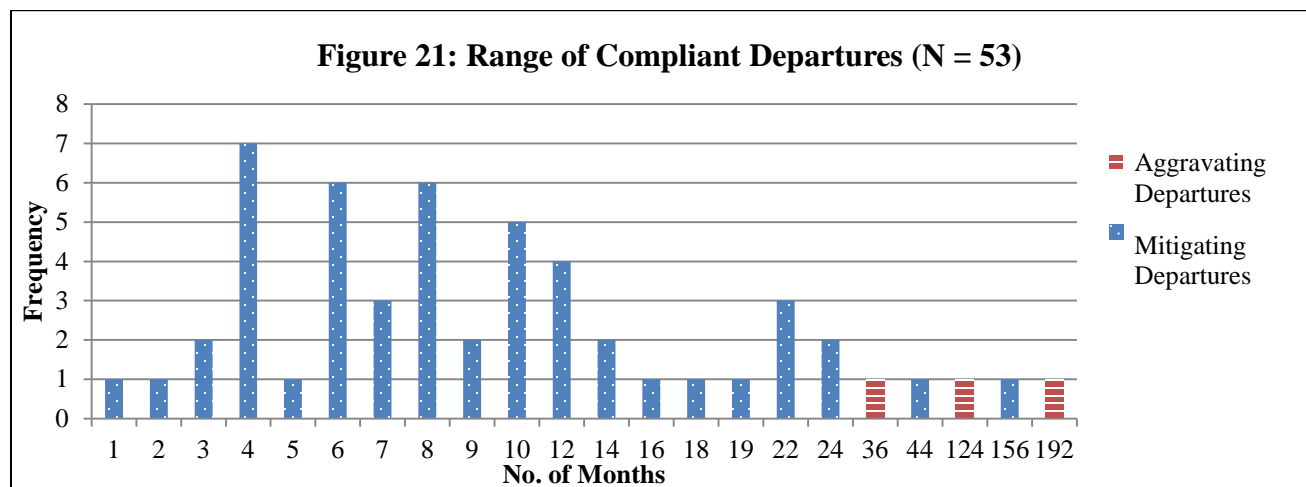


Generally, the least severe felony offenses received the greatest number of downward departures. Only six downward departures were given for offenses ranked above Master Group 8 or above Drug Group 2. Further, four of those six departures were due to the defendant providing assistance to law enforcement.

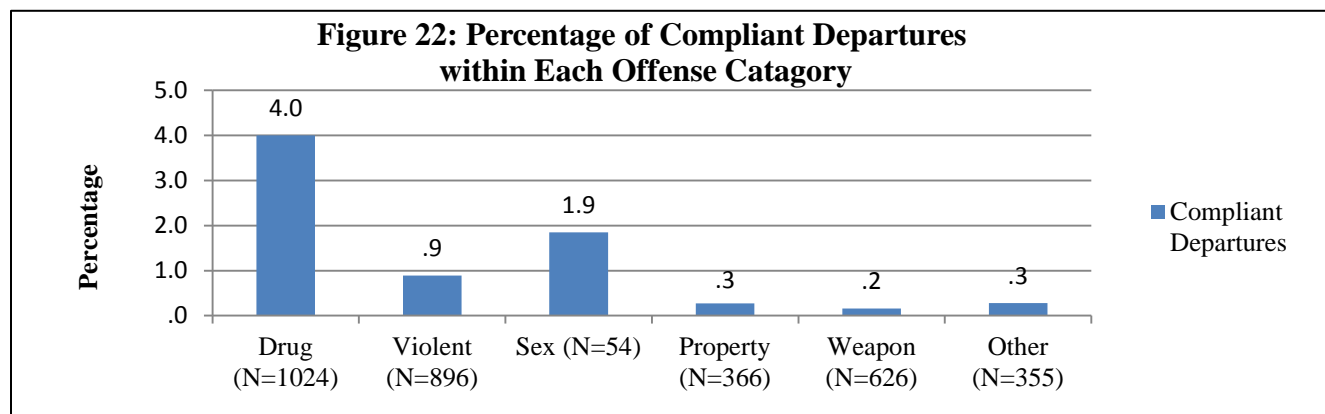
<sup>39</sup> There was one count where the sentencing judge noted both a M6 and a M10 departure principle.

<sup>40</sup> The offenses comprising these two groups are Distribution, Possession with Intent to Distribute, Attempted Distribution of a Schedule I or II Drug, Possession with Intent to Distribute a Schedule I or II Drug, and Possession of Liquid PCP.

Judges utilized upward departures only three times in 2011. These three upward departures were farther out-of-box than all but two of the downward departures were.<sup>41</sup> The upward departures averaged 117 months above the in-the-box range while the 50 downward departures averaged less than 14 months below the in-the-box range. Both of the downward departures that resulted in sentences more than 24 months below the in-the-box range also were the result of the defendant providing assistance to law enforcement.



Drug offenses had the greatest percentage of cases resulting in compliant departures. Four percent of the 1,024 drug cases for which the Commission received complete sentencing data resulted in a compliant departure. No other offense category had a similar departure rate.



<sup>41</sup> The three counts in which the judge selected an aggravating factor to depart upwards were for a First Degree Sexual Assault conviction following a plea agreement, a Conspiracy conviction following trial, and a Second Degree Murder While Armed Aggravating Circumstances conviction following trial.



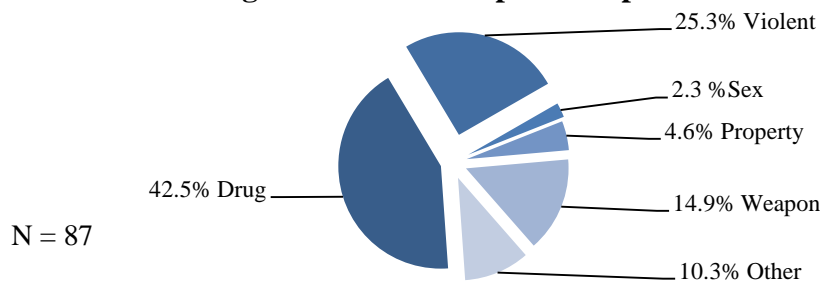
### C. Rule 11(e)(1)(C) Departures

The Commission only received five cases where an out-of-box sentence was the result of a Rule 11(e)(1)(C) plea. Rule 11(e)(1)(C) pleas are always deemed compliant because the parties agree on a guilty plea with a specific sentence or sentence range and if the judge accepts the plea, the judge is also bound by the parties' agreement. It should be noted that Rule 11(e)(1)(C) cases that resulted in an in-the-box sentences were classified as a compliant in-the-box sentence.

### D. Non-Compliant Departures

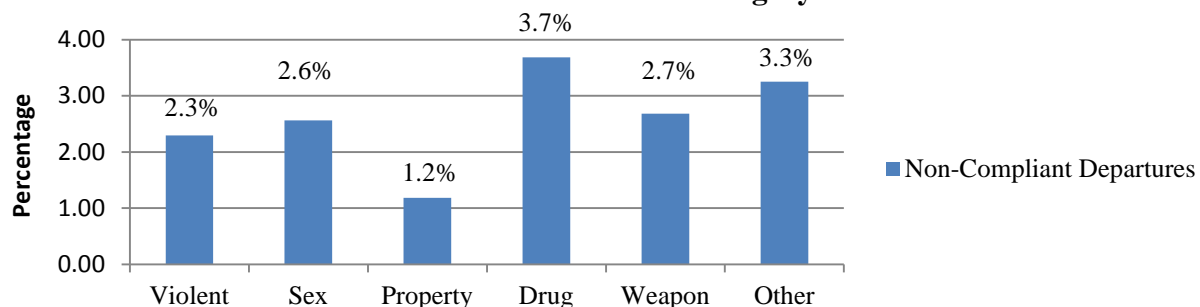
Non-compliant departures are the result of the sentencing judge imposing a sentence out-of-box and not selecting a departure principle. Similar to compliant departures, non-compliant sentences made up a very small percentage of the total sentences analyzed. Also similar to compliant departures, drug cases made up the highest percentage of non-compliant departures.

**Figure 23: Non-Compliant Departures**



In looking at the percentage of non-compliant sentences within each offense type, sentencing data shows that drug offenses were the most likely to receive a non-compliant sentence; however, compliance still remained above 96% (see Figure 24). Drug, weapon, sex, and other crimes had a slightly higher percentage of non-compliant departures than violent, or property crimes (see Figure 24).

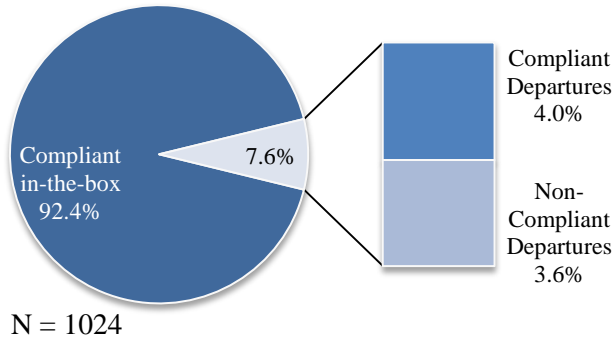
**Figure 24: Percentage of Non-Compliant Sentences within Each Offense Category**



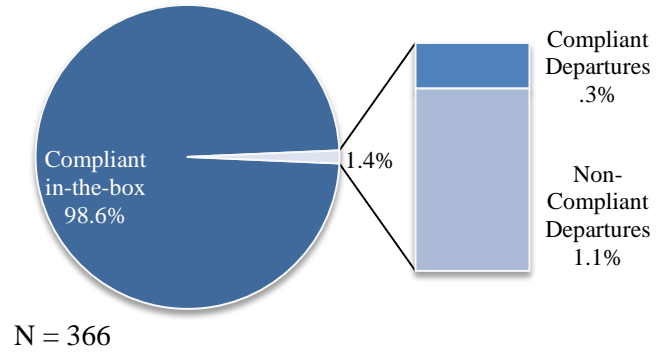
E. Comparing Compliance Across Offense Categories

Figures 25(a)-(f) show detailed compliance levels for each offense category.

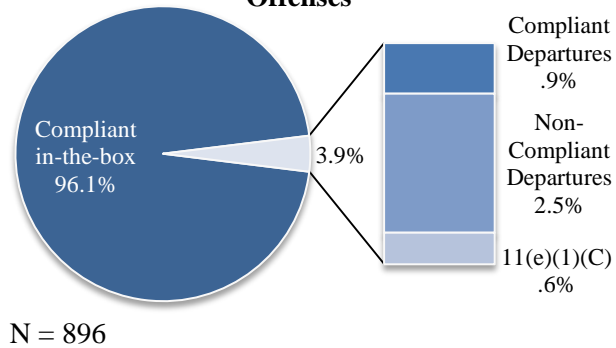
**Figure 25a: Compliance for Drug Offenses**



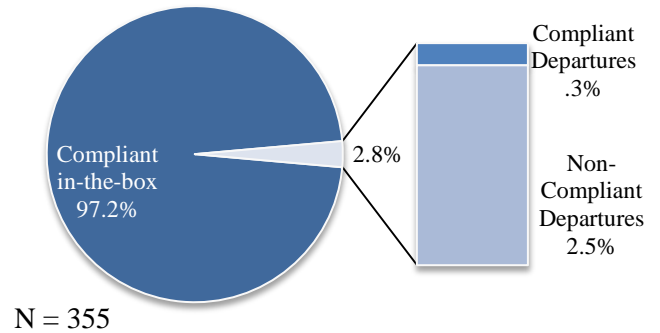
**Figure 25d: Compliance for Property Offenses**



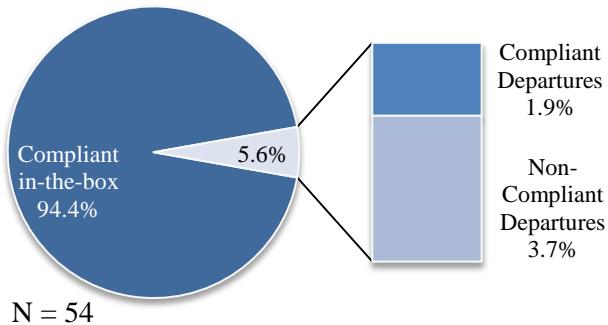
**Figure 25b: Compliance for Violent Offenses**



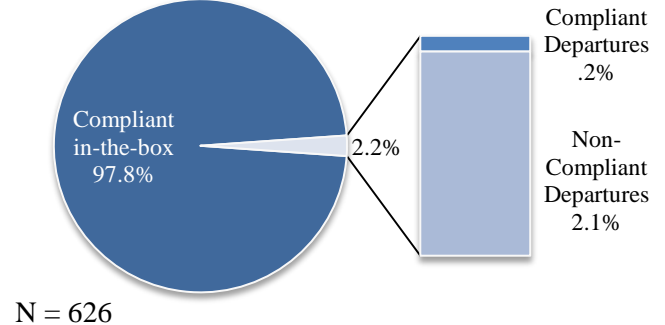
**Figure 25e: Compliance for Other Offenses**



**Figure 25c: Compliance for Sex Offenses**



**Figure 25f: Compliance for Weapon Offenses**



## **V. Conclusion**

As discussed, judicial compliance with the Guidelines remains very high. In 2010, the judicial compliance rate was above 96%; in 2011, it increased to above 97%. Furthermore, greater than 95% of sentences imposed fell within the in-the-box sentencing range. These data show that, generally, Superior Court judges are both following the Guidelines and consistently imposing sentences within the appropriate in-the-box sentencing range recommended by the Guidelines.

The 2011 compliance data also show that judges were more likely to impose a sentence outside of the in-the-box range for drug offenses than for any other offense type. This was true for both compliant departures and non-compliant departures. The reason for this may be the lack of an identifiable victim in many drug crimes or because of the individual characteristics of many drug offenders, including whether the offender was a substance abuser amenable to treatment. Sex offenses have the second highest rate of out-of-box sentences; however, the Commission is unable to draw conclusions from sex offense compliance data because of the very small number of cases.

It is also noteworthy that most compliant departures were downward departures. However, while greatly outnumbering the upward departures, downward departures were usually imposed in less serious felony offenses and the sentence did not depart significantly from the in-the-box range. Upward departures were decidedly less common but resulted in considerably longer sentences outside of the in-the-box range.

Finally, this is the second consecutive year where the M10 “catch all” downward departure was the most common departure principle selected by judges. Given the frequent use of this “catch all” departure compared to all others, the Commission intends to study what, if any, common reasons exist for these departures and whether the departure principles should be adjusted to reflect these reasons.

## CHAPTER SIX

### CRIMINAL CODE REVISION PROJECT

In addition to the Commission's mandate to develop, implement, and monitor the Voluntary Sentencing Guidelines, the Council of the District of Columbia has directed the Commission to review the entirety of the District of Columbia Criminal Code and, based on that review, develop and propose a comprehensive set of revisions to the District's criminal laws. This is a challenging process and requires a significant investment of time and resources. However, the Commission's ultimate product aims to add clarity and consistency to the District's criminal laws in order to make their application more fair and efficient.

#### I. History and Background

In 1974, the District of Columbia Criminal Code underwent its first major revision since its adoption at the turn of the twentieth century. As part of that process, in 1978, the District of Columbia Law Revision Commission drafted a set of criminal code revisions that recommended the elimination of certain penalty inequities and simplified complex areas of the Code.<sup>42</sup> However, with the exception of revisions to a few sections of the Criminal Code in the following years, such as the Theft and White Collar Crimes Act of 1982 and the Anti-Sexual Abuse Act of 1994, the majority of the Law Revision Commission's recommendations were not enacted into law.

As a result, the Committee on the Judiciary of the District of Columbia Council recently turned its attention to a complete reexamination of the District's criminal statutes, to remove ambiguity, disorganization, and redundancies within the code. Specifically, the Council found that

. . . [t]he existence of overlapping provisions and confusing or outdated language, penalties that are disproportional to the crime or disparate from penalties of similar crimes, and other inconsistencies impede the fair and equitable administration of the law.<sup>43</sup>

To address these problems, in 2006, the Council amended the Commission's mandate to include criminal code revision. To effectuate the Council's mandate, the Commission created the

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<sup>42</sup> HOUSE COMMITTEE ON THE DISTRICT OF COLUMBIA, 95<sup>TH</sup> CONG., 2D SESS., NEW BASIC CRIMINAL CODE FOR THE DISTRICT OF COLUMBIA (Comm. Print 1978) (District of Columbia Law Revision Commission Recommendation).

<sup>43</sup> Report on Bill 16-172, The Advisory Commission on Sentencing Act of 2006.

Criminal Code Revision Committee (“the Committee”) and appointed five Commission members to serve on the Committee.<sup>44</sup>

## **II. Legislative Mandate**

The Commission’s specific legislative mandate with regard to criminal code revision is the preparation of comprehensive recommendations to the Council and the Mayor that:

- (1) Revise the language of criminal statutes to be clear and consistent;
- (2) In consultation with the Codification Counsel in the Office of the General Counsel for the Council of the District of Columbia, organize existing criminal statutes in a logical order;
- (3) Assess whether criminal penalties (including fines) for felonies are proportionate to the seriousness of the offense, and, as necessary, revise the penalties so they are proportionate;
- (4) Propose a rational system for classifying misdemeanor criminal statutes, determine appropriate levels of penalties for such classes, and classify misdemeanor criminal statutes in the appropriate classes;
- (5) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate;
- (6) Identify criminal statutes that have been held to be unconstitutional;
- (7) Propose such other amendments as the Commission believes are necessary; and
- (8) Enable the adoption of Title 22 as an enacted title of the District of Columbia Official Code.

The Commission shall submit its recommendations for criminal code revisions in the form of reports. Each report shall be accompanied by draft legislation or other specific steps for implementing the recommendations for criminal code revisions.

D.C. Code § 3-101.01 (a), (c).

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<sup>44</sup> The Committee is chaired by Ronald Gainer, Esq. The members also include Donald Braman, Esq., a representative of the United States Attorneys’ Office, a representative of the Office of the Attorney General, and a representative of the Public Defender Service for the District of Columbia. The Commission is currently considering expanding Committee membership.

### **III. Accomplishments to Date**

#### **A. Fine Proportionality**

On January 11, 2011, the Commission submitted to the Council its first proposed revision to the District's Code, entitled the "Fine Proportionality Act of 2011" ("the Act"). After completing an analysis of fines throughout the criminal code, the Commission found that financial penalties were disproportionate and often did not correlate to the severity of the crime or maximum allowable term of imprisonment.<sup>45</sup> The proposed legislation, which remains pending before the Council, seeks to correct this disproportionality by relating the fine for each criminal offense to the maximum term of imprisonment, thus ensuring that the fines are proportional. The Act would create a common fine proportionality system and replace the fine provisions in hundreds of statutes. It would also negate the need for future criminal statutes to set specific fine amounts, as the fine amount would be directly proportional to the maximum term of imprisonment.

#### **B. Criminal Code Revision**

In 2011, Commission staff began researching and drafting revisions to specific sections and subsections of the District's criminal code. Commission staff submitted these drafts to the Committee and, in the late summer, the Committee began to meet and discuss proposed revisions. However, as the Committee began to analyze specific code sections, it became clear that before revision efforts could continue, the Commission needed to formalize the specific goals for the project and articulate the procedure for achieving those goals. This was necessary because Committee members had differing goals and expectations for the project, and it was clear that creating such a document would help guide Committee members and staff throughout the revision process.

The Commission convened several lengthy meetings to discuss the appropriate scope and goals of the project. These discussions took into consideration the Council's mandate, the staffing and budgetary resources available to the Commission, and the effect that different approaches to code reform would have on the entire legal community and the public. These meetings culminated in the Commission's approval of set of goals and procedures for the Criminal Code Revision Project.

The Commission intends to fulfill its mandate by implementing a standardized language and organization scheme for use throughout the entire criminal code, and by drafting specific revisions that ensure that each code section is clear, consistent, and free of ambiguity and

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<sup>45</sup> For example, Attempted Robbery is punishable by imprisonment and a fine of \$500 while Robbery is punishable only by imprisonment. Drug felonies and most sex offenses have exceptionally large fine maximums, while Murder, Kidnapping, and many other crimes of violence have no fine provisions at all.

historical anachronisms. Proposed revisions will take into account the language of each section under review, its legislative history, any judicial interpretations, its relationship with other sections of the code, and any other relevant factors. Proposed revisions may also include substantive changes when necessary and appropriate to promote consistency and clarity or otherwise improve the code.

Commission staff will support the activities of the Committee by researching and drafting proposed language; proposed revisions will be accompanied by detailed memoranda that will contain the current language of the sections under review, one or more proposals for new language, and an explanation of both the proposed changes as well as their anticipated effect. The explanation will contain (1) the relevant legislative history of the language at issue, (2) all relevant case law, and (3) any relevant comparison to other sections of the District's Code, the codes of other states, and/or the Model Penal Code.

Subject to adequate staffing and resources, the Committee will meet on a regular basis to consider the drafts and memoranda in a timely manner. During these meetings, the Committee will determine whether it can reach a consensus on a particular chapter, sub-chapter, or section. If Committee members cannot reach a consensus on the proposed changes to statutory text or notes, the Committee will identify the specific areas of disagreement. The disputed language, along with any alternative language proposed by Committee members, will be placed in brackets for consideration by the Commission. After receiving proposed revisions from the Committee, the Commission will determine what action to take and when, with respect to its obligation under D.C. Code § 3-101.01 (c).

#### **IV. Project Staffing**

Throughout its existence, the project has suffered from significant staffing shortages. However, from mid-August through mid-December 2011, the project was staffed with a part-time Project Director and a full-time paralegal. During this period, the Commission was able make the progress previously discussed. Unfortunately, the Project Director retired in mid-December and the project's paralegal was promoted to a different agency position, currently leaving the project unstaffed.

Given the importance of identifying and hiring a director who can work with the Committee and move the project forward, the Commission decided to reclassify the Project Director as a full-time position. This decision was made in order to increase the number and caliber of potential applicants for the position and to provide more support for the Committee and the Commission. The Commission is currently in the process of recruiting for this position. Upon hiring a new Project Director, the Commission intends to fill the vacant paralegal position. The Commission expects to fill both positions during 2012. Additionally, as has been done in previous summers,

the Commission plans to utilize two or three law student summer interns to assist in researching and drafting proposed revisions.

The Commission has also begun preliminary exploration into the feasibility of working with a law school or schools to create a permanent externship course wherein students would work on the project while receiving classroom instruction on statutory construction. Such a course would give the project a steady, year-round supply of law student assistance and would be a valuable hands-on learning opportunity for the participating students.

## **V. Funding Options and Next Steps**

As previous annual reports have noted, analysis of code reform efforts in several states, including Arizona, Illinois, and earlier efforts in the District, along with the attempt to revise the federal criminal code, make clear that the amount of resources allocated to the project directly affects what the Commission is able to accomplish. At every step in this process, the Commission has noted that all proposed reforms must be carefully drafted, extensively researched, and thoroughly vetted. For this reason, even when fully staffed with a full-time Project Director and paralegal, it will take the Commission a number of years to accomplish the goals set forth by the Council. An increase in staffing would enable the Project to move forward more expeditiously.



## Appendix A

The top five grouped offenses are comprised of the following crimes:

### 1. PWID+Dist: Drugs -- Distribution:

- i) Drugs -- Distribution, or PWID: I, II Narcotic and abusive drugs (heroin, cocaine, PCP, methamphetamine, etc.)
- ii) Drugs -- Distribution, or PWID: I, II, III Non-narcotic and non-abusive drugs (including marijuana -- 2<sup>nd</sup> offense or > ½ pound)
- iii) Drugs -- Distribution, or PWID: IV
- iv) Drugs -- Possession of Liquid PCP
- v) Drugs -- Distribution to Minors

### 2. Attempted Drug Offenses:

- i) Drugs -- Attempt or Conspiracy of an offense in Drug Group 1
- ii) Drugs -- Attempt or Conspiracy of an offense in Drug Group 2
- iii) Drugs -- Attempt or Conspiracy of an offense in Drug Group 3

### 3. Weapons:

- i) Carrying Pistol Without License (CPWL)  
Carrying Dangerous Weapon (CDW)
- ii) Carrying Pistol Without License (CPWL)  
Carrying Dangerous Weapon (CDW)  
2<sup>nd</sup>+ offense or after felony conviction
- iii) Firearm, Presence in a Motor Vehicle Containing: Prior gun conviction or felony
- iv) Firearm, Presence in a Motor Vehicle Containing
- v) Firearm, Unlawful Possession of by a person with a prior conviction > 1 yr
- vi) Firearm, Unlawful Possession of by a person with a prior conviction > 1 yr and COV other than Conspiracy
- vii) Firearm, Unlawful Possession of by others

### 4. Assault:

- i) Aggravated Assault while armed
- ii) Aggravated Assault
- iii) Aggravated Assault -- Attempt
- iv) Aggravating Circumstances
- v) Assault with a Dangerous Weapon (ADW)
- vi) Assault on Police Officer (APO) while armed
- vii) Assault on Police Officer (APO)

- viii) Assault on Police Officer (APO) w/ deadly weapon -- 2nd+ offense or prior felony
- ix) Assault with Intent to Kill or Poison while armed
- x) Assault with Intent to Kill or Poison
- xi) Assault with Intent to Rob while armed
- xii) Assault with Intent to Rob
- xiii) Assault with Intent to 1° or 2° Sexual Abuse or Child Sex Abuse while armed
- xiv) Assault with Intent to 1° or 2° Sexual Abuse or Child Sex Abuse
- xv) Assault with Intent to Commit any other Felony while armed
- xvi) Assault with Intent to Commit any other Felony
- xvii) Assault with Intent to Commit Mayhem while armed
- xviii) Assault with Intent to Commit Mayhem
- xix) Assault with Significant Injury

5. Robbery:

- i) Robbery – while armed
- ii) Robbery
- iii) Robbery -- Attempt while armed
- iv) Robbery -- Attempt