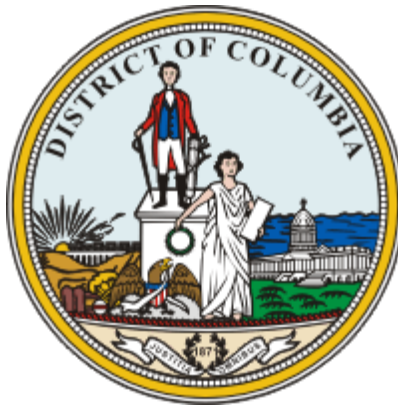




DISTRICT OF COLUMBIA SENTENCING AND CRIMINAL
CODE REVISION COMMISSION
2010 COMPLIANCE REPORT



SEPTEMBER 2010

DISTRICT OF COLUMBIA SENTENCING AND CRIMINAL CODE REVISION COMMISSION
441 FOURTH STREET, NW, SUITE 830 SOUTH
WASHINGTON, DC 20001
PHONE: (202) 727-8822 FACSIMILE: (202) 727-7929
WEBSITE: <http://sentencing.dc.gov>

MEMBERSHIP OF THE DISTRICT OF COLUMBIA SENTENCING AND CRIMINAL CODE REVISION
COMMISSION

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Chairman, Associate Judge
Superior Court of the District of Columbia

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Superior Court of the District of Columbia

The Honorable J. Ramsey Johnson
Superior Court of the District of Columbia

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George Washington University School of Law

Brian Frost, Ph.D.
American University

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Attorney, Private Practice

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Urban Institute, Justice Policy Center

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Public Defender Service for the District of Columbia

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Court Services & Offender Supervision Agency

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U.S. Attorney's Office

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Citizen Member

Anne Seymour
Citizen Member

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** Non-voting Member

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Kenneth Cowgill, Esq.
Attorney Advisor

Courtnei Y. Burleson, Esq.
Staff Attorney

Chan Chanhatsilpa, Ph.D.
Research Analyst

Megan E. Collins
Data Management Specialist

Mia Hebb
Staff Assistant

 District of Columbia
Sentencing and Criminal
Code Revision Commission

441 Fourth Street, NW, Suite 830 South, Washington, D.C. 20001
(202) 727-8822 – Fax (202) 727-7929

*Hon. Frederick H. Weisberg,
Chairperson*

*Barbara S. Tombs
Executive Director*

September 29, 2010

*Donald Braman, Esq.
Hon. Harold L. Cushenberry
Brian Forst, Ph.D.
Ronald Gainer, Esq.
Laura E. Hankins, Esq.
Adele V. Harrell, Ph.D.
Cedric Hendricks, Esq.
Hon. Ramsey Johnson
Patricia Riley, Esq.
Michele Roberts, Esq.
David Rosenthal, Esq.
Jennifer Seltzer-Stitt
Anne Seymour
Earl J. Silbert, Esq.*

Honorable Vincent C. Gray, Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue
Washington, DC 20004

Dear Chairman Gray:

Pursuant to the District of Columbia Sentencing and Criminal Code Revision Commission Amendment Act of 2007, I am pleased to submit the 2010 Sentencing Guideline Compliance Report, which includes the Commission's analysis of judicial compliance with the District's voluntary sentencing guidelines. This report covers the period January 1, 2009 through December 31, 2009.

As you may recall, the Commission's analysis of judicial compliance was not included in its Annual Report that was submitted in April of this year due to data compatibility issues that have since been resolved. I am pleased to report that the voluntary sentencing guidelines continue to experience a high level of acceptance, with nearly 90% compliance among the members of the judiciary. This report examines overall judicial compliance, as well as, compliance by demographics, offense category and type of disposition.

I hope you find this report is both informative and useful.

Respectfully Submitted,

Frederick H. Weisberg

Frederick H. Weisberg,
Chairman

cc:

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The Honorable Marion Barry
The Honorable Murial Bowser
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The Honorable Jack Evans
The Honorable Jim Graham
The Honorable Vincent C. Gray
The Honorable Phil Mendelson
The Honorable Harry Thomas, Jr.
The Honorable Tommy Wells

The Honorable Adrian Fenty
The Honorable Lee F. Satterfield

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This Report presents an overview of judicial compliance with the Sentencing Guidelines for felony sentences imposed in the District of Columbia from January 1, 2009 to December 31, 2009. Overall compliance for felony sentences is reviewed and compliance by demographics, criminal history and type of sentence imposed is presented.

Highlights

- Overall, judicial compliance for sentences imposed on felony counts in 2009 was 88.1%.
- Most of the non-complaint sentences were prison terms shorter than the bottom of the applicable guideline prison range.
- Compliance was high across all categories but varied slightly by certain factors such as criminal history, age of offender, and type of offense.

Background on Sentencing Guidelines in the District of Columbia

In 2004, the District of Columbia implemented voluntary Sentencing Guidelines. Their purpose is to ensure consistency and proportionality in sentencing. The Commission developed two felony sentencing grids, the Master Grid and Drug Grid, which focus on two of the primary considerations at sentencing: the offense of conviction and criminal history of the offender. The offense of conviction is located on the vertical axis and is represented by the offense severity group, which ranges from one to nine on the Master Grid and one to three on the Drug Grid. The criminal history of the offender is presented on the horizontal axis and defined by five criminal history categories, ranging from A to E. At the intersection of these two axes on each grid, is a box containing the sentencing options and prison sentence range for that particular combination of the crime of conviction and criminal history of the offender. The Master Grid contains forty-five boxes and the Drug Grid has fifteen boxes. In certain boxes, a prison

sentence is the only option consistent with the guidelines. In other boxes, either a prison sentence or a short-split sentence -- defined as a sentence in which the defendant serves a sentence of incarceration for six months or less and is then released to a period of probation -- is permissible. In the remaining boxes, a prison sentence, a short-split sentence, and probation are all options permitted by the guidelines. Generally, as the seriousness of the offense and the criminal history of the offender increase, the length of the prison sentence increases and the alternatives to incarceration decrease.

The Sentencing Guidelines recognize three types of sentencing dispositions: prison sentences, short split sentences, and probation sentences.¹ As previously defined, a short split sentence is one in which the judge suspends execution of all but **six months or less** of the initially imposed prison sentence and imposes a period of probation to follow the offender's release from prison. In a probation sentence, the judge imposes a sentence within the applicable prison range, suspends **the entire** prison sentence, and places the offender on probation immediately.

Although the Guidelines in the District of Columbia are voluntary, the Commission, as part of its statutory obligations, continues to monitor compliance and make recommendations for any necessary adjustments to the Guidelines. Since the implementation of the Guidelines in 2004, the data has indicated a high rate of judicial compliance. Overall compliance with the Sentencing Guidelines has been near 90% since 2006, with compliance rates of 90.1% in 2006, 89.5% in 2007, and 89.8% in 2008.

¹ So called "long split sentences" are also authorized, but they are aggregated here as prison sentences because the amount of time an offender must serve on a long split sentence must be at least equal to the shortest prison term authorized in the applicable guidelines box.

Definition of Compliance

The rules governing the Sentencing Guidelines specify that for a sentence to be compliant, the sentence must be consistent with the applicable guideline in all respects. A sentence is considered compliant if it is:

- (1) a sentence within the appropriate box;
- (2) a sentence within the appropriate box as expanded by a statutory enhancement;
- (3) a sentence outside the box where there is a stated aggravating or mitigating reason or another substantial and compelling reason of like gravity; and
- (4) a sentence agreed to and accepted under Superior Court Criminal Rule 11 (e) (1) (C).²

Due to data limitations, specific reasons for non-compliance are not included in this report. In addition, a sentence is considered compliant if both the imposed sentence (prior to the suspension of part of or the entire sentence) and the effective sentence (the unsuspended portion of sentence to be served) are compliant with regard to the four elements listed above.³

A sentence that conforms to the guidelines is considered a “guideline compliant” or “within the box” sentence, whereas, a sentence that does not conform to the guidelines is considered a “guideline non-compliant” or “outside the box” sentence.⁴

A sentence is deemed non-compliant if either the type of sentence imposed (known as the “in-out” decision) is not permissible in a specific box or the prison term is below or above the

² Superior Court Rule of Criminal Procedure 11(e)(1)(C) permits the parties to reach a plea agreement that determine both the offense of conviction and the sentence or sentence range. “A Rule 11(e)(1)(C) plea agreement that is accepted by the court controls the applicable sentence. This means that if the parties and the court agree to a particular sentence or sentencing range, it need not fall ‘within the box.’” DCVSG §5.1.

³ If a prison sentence is not suspended in whole or in part, the imposed and effective sentences are the same.

⁴ Some “outside the box” sentences are compliant if the departure is authorized by one of the recognized aggravating or mitigating factors.

recommended range in a particular box. There are three specific types of non-compliance: dispositional, upward durational and downward durational.

I. Dispositional Non-Compliance

Dispositional non-compliance occurs when a judge imposes a type of sentence that is not among the options permitted in a particular box. Because of the nature of the Sentencing Guidelines grid structure, this type of non-compliance means probation in a box that does not permit probation or a short split in a box that permits only a prison sentence. A prison sentence cannot be a dispositional non-compliant sentence because all of the boxes on both the Drug and Master grids contain a recommended range for a prison term.

II. Durational Non-Compliance

The other two types of non-compliant sentences are categorized as **durational non-compliance**, which occurs when a judge imposes a prison sentence that is either below or above the sentencing range recommended by the Guidelines.

A. Upward Durational

When the prison term imposed is above the guideline range, and is not the result of a statutory enhancement or a departure, it is considered an upward durational non-compliant sentence. For example, if the guideline range recommends a sentence between 30 and 72 months, any prison sentence longer than 72 months would be considered a non-compliant upward durational sentence.

B. Downward Durational

When the prison term imposed is below the applicable guideline range and the sentence is not the result of a specific statutory provision or departure, it is considered a downward durational

non-compliant sentence. For example, if the guideline range recommends a sentence between 30 and 72 months, any prison sentence shorter than 30 months is considered a non-compliant downward durational sentence.

Data Source

The analysis presented in this paper is based on data obtained from two sources: 1) sentencing data from the District of Columbia Superior Court; and 2) criminal history and demographic information from the Court Services and Offender Supervision Agency (CSOSA). The information from these two sources was collected from Sentencing Guidelines Forms (SGF), which are completed by CSOSA and transmitted to the Commission. The Commission retains the SGF until the actual sentence becomes available in the Superior Court's database (Courtview), at which time the sentence imposed, as well as the recommended guideline sentence, is entered into the Commission's database. When the sentence imposed is not within recommended options, the Commission codes it in its database as non-compliant.

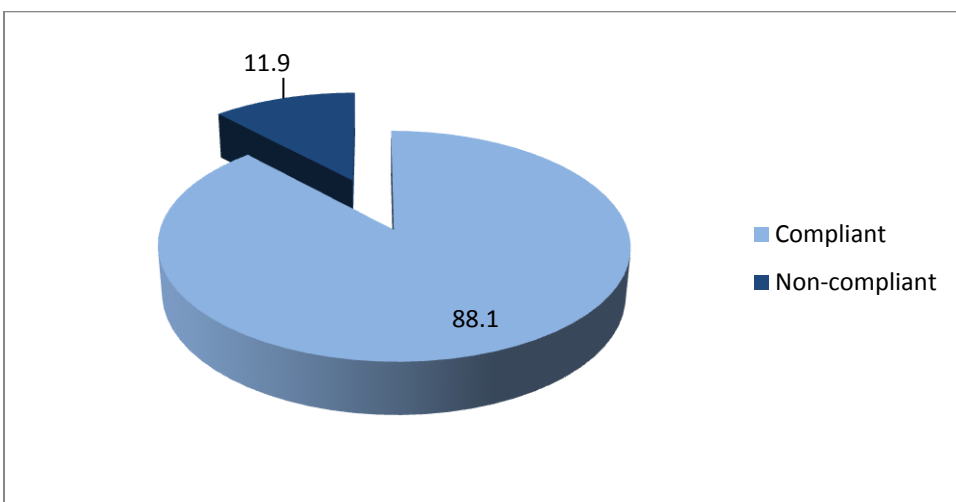
This report examined judicial compliance by individual felony count. A defendant may be sentenced on a single count or on multiple counts. Each count is included in the analysis. It is possible for an individual offender to be sentenced more than once on separate counts during calendar year 2009, which would result in that individual being counted twice in the data used for this report. However, those instances are few in number and do not impact the validity of the analysis. Data collection resulted in 4,699 felony counts, representing 3,410 felony cases sentenced in the District of Columbia for the period of January 1, 2009 through December 31, 2009.

Findings

I. Overall Compliance

Figure 1 shows that the overall compliance for sentences imposed during 2009 was 88.1%, which is consistent with the compliance rates reported in the Commission's previous reports.⁵

Figure 1: Overall Compliance Rate, 2009 (N=4,699)



These consistent compliance rates over the past several years indicate that judges are imposing the sentences recommended under the guidelines in the vast majority of cases, but are exercising judicial discretion to impose alternative sentences when the specific facts of a case so warrant or where justice would be better served.

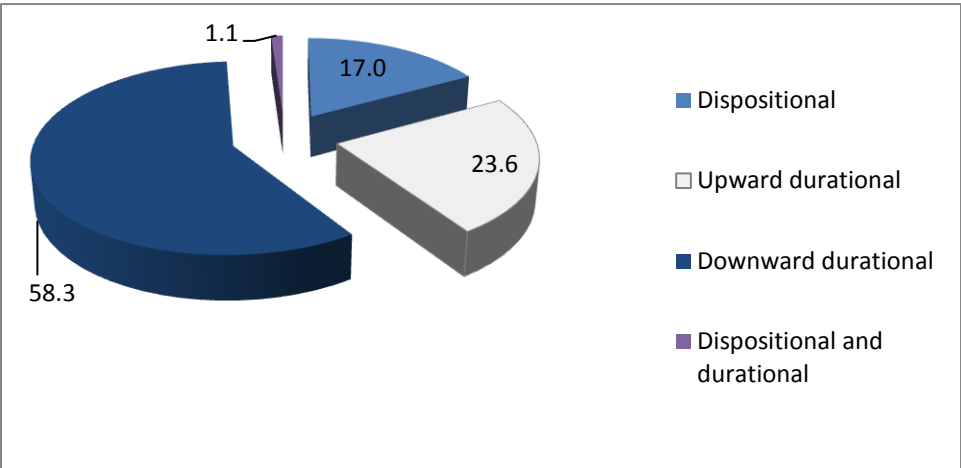
Figure 2 (on Page 7) displays a breakdown by the types of non-compliant sentences for 2009.

Over half (58.3%) of the 559 non-compliant sentences were below the bottom of the

⁵ There were six cases which accounted for 104 counts that all received non-compliant sentences. Each of these cases represented 10 or more counts and involved atypical circumstances for which judges felt it necessary to impose sentences that were outside of the recommended guideline options.

recommended ranges (downward durational) and 23.6% were above the top of the recommended ranges (upward durational). A closer examination shows that 24.6% of the 349 downward durational sentences were the result of a large number of non-compliant “long split” sentences. A long split sentence is defined as the imposition of a prison term within the applicable guideline range in which the court suspends the execution of all but a term of imprisonment, greater than six months, which also falls within the applicable guideline range followed by a period of probation. Non-compliant long split sentences involve a prison term that was initially compliant, however, when a portion of the imposed prison term is suspended, the remaining term of imprisonment falls below the recommended guideline range. Dispositional non-compliant sentences comprised only 17.0% of all non-compliant sentences, which represented either probation sentences imposed in short split or prison sentence permissible only boxes or short split sentences imposed in prison sentence only boxes.

Figure 2: Percentage of Types of Non-Compliance, 2009 (N=559)



Six counts (1.1% of all non-compliant sentences) received sentences that were non-compliant on both the disposition (“in-out” decision) and length of the prison sentence. This occurs when the initial imposed sentence (before suspension of part of or the entire sentence) and the effective sentence (sentence to be served after suspension) are both not compliant. For example, one of these counts received an initial sentence of 12 months in a box with a recommended range of 18 to 60 months (downward durational). After the judge suspended the entire sentence, and imposes a probation sentence, it would be considered a dispositional non-compliant sentence because probation sentences are not permitted in this particular grid box.

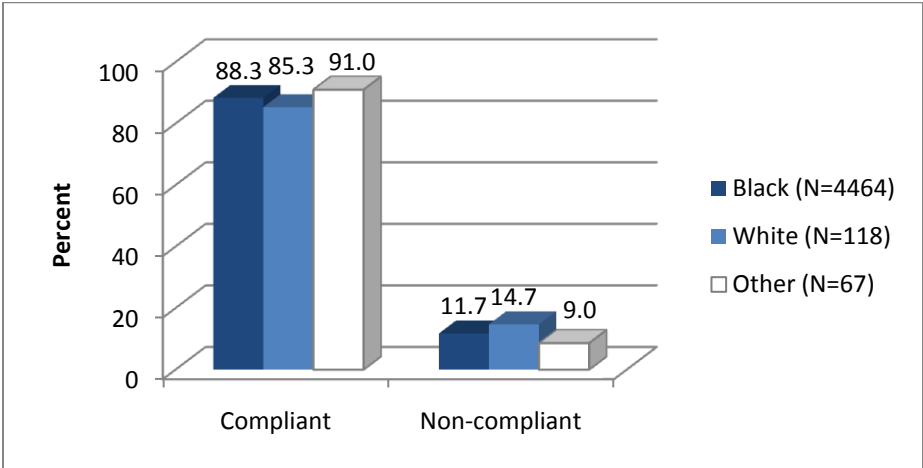
II. Compliance by Offender Characteristics

This section examines compliance rates by demographic characteristics of offenders sentenced to felonies in 2009. The demographic factors examined include: race, gender, and age.

A. Race

Figure 3 (on Page 9) indicates that compliance rates were relatively high across all racial groups, with sentences imposed on offenders in the “other” category (91.0%) and black offenders (88.3%) having the highest compliance rates, respectively. In addition, Table 1 (on Page 10) displays compliance rates by the offense type, race, and gender.

Figure 3: Compliance Rates by Race⁶ of Offender, 2009 (N=4,649)



The data in Table 1 (on Page 10) shows that black offenders had the lowest compliance rate for sentences imposed for sex offenses (83.2%), whereas white offenders had the lowest compliance rate for sentences imposed for violent offenses (84.7%), with the majority of these non-compliant sentences involving durational downward sentences. These two specific offense categories represent a wide range of criminal actions and behaviors. These findings may indicate that judges were using their discretion to impose sentences that are appropriate given the circumstances and criminal behavior involved.

⁶ There were 50 counts that were missing information on the race of the offender. These counts were excluded from the analysis of compliance by race.

Table 1: Compliance Rates by Offender Characteristics and Offense, 2009 (N=4,699 for Gender and N=4,649 for Race)

Offense	Gender (%)		Race (%)		
	Male	Female	Black	White	Other
Sex Offenses	84.5 N=110	N/A N=0	83.2 N=101	100.0 N=4	100.0 N=5
Violent Offenses	87.1 N=1010	85.0 N=104	90.0 N=1000	84.7 N=59	86.0 N=43
Weapons Offenses	86.5 N=762	72.7 N=11	86.4 N=755	100.0 N=12	100.0 N=2
Drug Offenses	90.3 N=1593	88.3 N=205	89.9 N=1754	87.5 N=18	N/A N=0
Property Offenses	88.1 N=386	100.0 N=30	89.2 N=388	87.5 N=16	100.0 N=4
Other Offenses	84.9 N=449	87.2 N=39	85.8 N=466	55.6 N=9	100.0 N=13

B. Gender

Figure 4 (on Page 11) shows the compliance rates for sentences imposed on male offenders and female offenders. The overall percentages of compliant sentences imposed for males (88.4%) and females (84.6%) were both high. Examining the information provided in Table 1 reveals the highest compliance rates for males were for drug offenses at 90.3% compared to 88.3% for females. Females sentenced for property offenses showed 100% compliance with the recommended guideline sentence, compared to 88.1% for males. For violent offenses, there

was a small difference in the compliance rates between sentences imposed on male offenders (87.1%) and female offenders (85.0%).

Figure 4: Compliance Rates by Gender of Offender, 2009 (N=4,699)

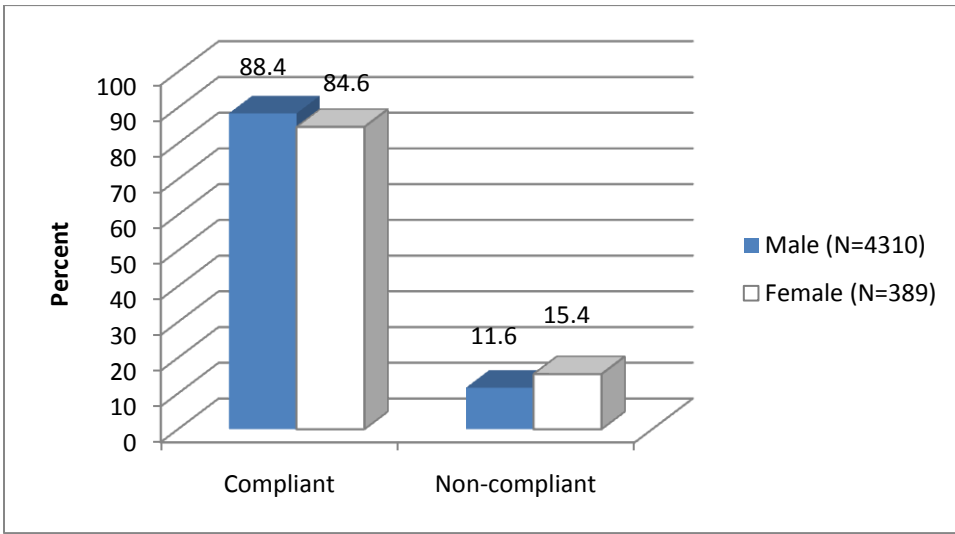
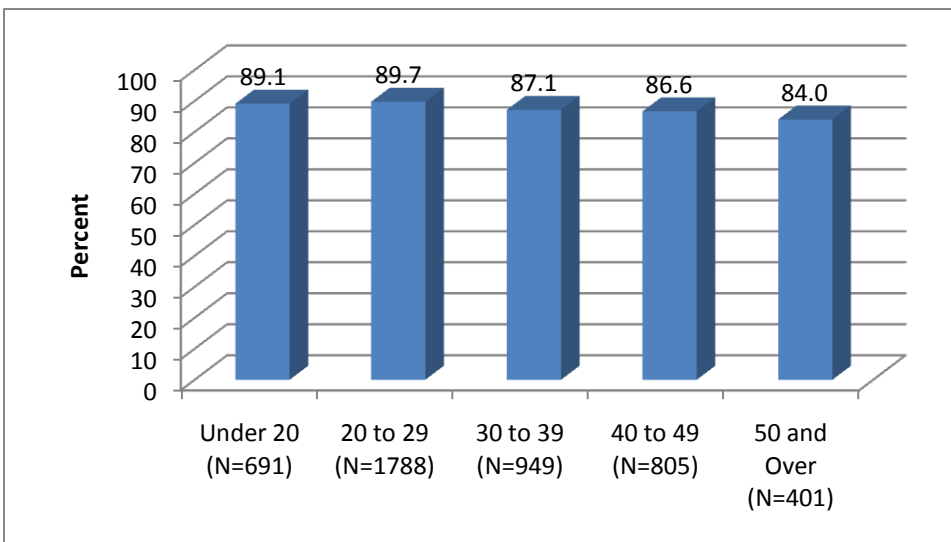


Figure 5: Compliance Rates by Age⁷ of Offender, 2009 (N=4,634)



⁷ There were 65 counts that were missing information on the age of the offender. These counts were excluded from the analysis of compliance based on age.

C. Age

Figure 5 (on Page 11) displays a small but steady decline in the compliance rates as the offenders' age at the time of the offense increased. The decline in compliance rates with age is limited but this trend warrants monitoring over the next few years.

III. Compliance by Type of Offense and Criminal History

This section presents compliance rates by the type of offense sentenced and criminal history of the offenders who were sentenced in 2009.

A. Offense Types

The type of offense is represented by six major offense categories, listed here, with the most common crimes in each offense category:

- 1) Sex offenses, which include all degrees of sex abuse and of child sex abuse;
- 2) Violent offenses, which include armed and unarmed first degree murder, second degree murder, armed and unarmed robbery, assault with a deadly weapon, and aggravated assault;
- 3) Weapon offenses, which are comprised predominantly of carrying a pistol without a license, felon in possession of a firearm, and possession of a firearm during a crime of violence;
- 4) Drug offenses, which are distribution or possession with intent to distribute a controlled substance and attempted distribution or attempted possession with intent to distribute a controlled substance;
- 5) Property offenses, which include arson, first degree burglary, second degree burglary, first degree theft, receiving stolen property, and unauthorized use of a vehicle; and

6) Other offenses, which consist largely of escape, fleeing law enforcement, obstruction of justice, and Bail Reform Act violations.

Figure 6 shows that there was little difference in the compliance rates across the six offense categories. Sentences imposed on drug offenses had the highest compliance rate, at 90.0%. As previously discussed in the section on compliance by race, and sentences imposed on sex offenses had the lowest compliance rate, at 84.5%.

Figure 6: Compliance Rates by Major Offense Category, 2009 (N=4,699)

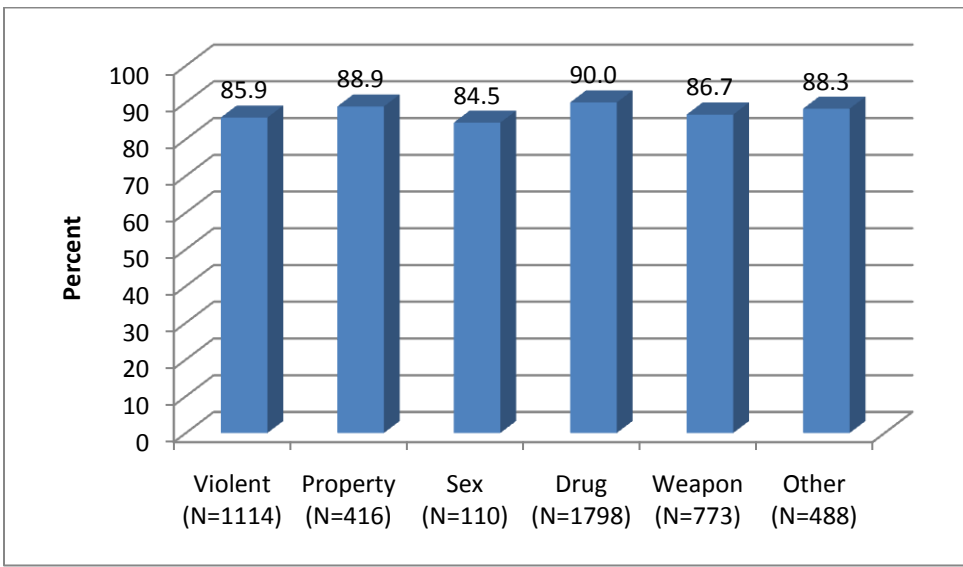
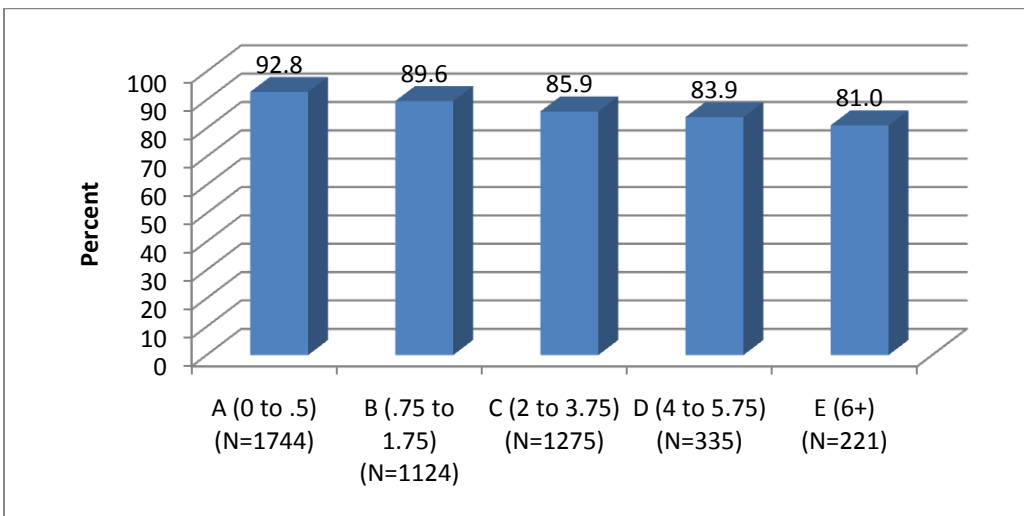


Figure 7: Compliance Rates by Criminal History Category, 2009 (N=4,699)



B. Criminal History⁸

As shown in Figure 7 and Table 2 (on Page 15), sentences imposed on offenders with limited criminal history in Categories A and B demonstrated higher compliance rates of 92.8% and 89.6% respectively when compared to offenders with greater criminal histories in Categories D at 83.9% and E at 81.0%. Of the non-compliant sentences in these two categories, 64.8% in Category D and 73.8% in Category E were downward durational non-compliant sentences, which may be impacted by the age of the offender. When age of the offender is factored into the analysis, 22.1% of the downward durational sentences in Criminal History Categories D and E were imposed on offenders who were 40 to 49 years of age and 18.4% on offenders who were 50 years of age or older.

⁸ The score is calculated by adding all of the points accumulated from prior adult convictions, and prior juvenile adjudications. Points are weighted based on the seriousness of the offense, as ranked by the Sentencing Guidelines. The total score then places the offender in a one of five categories along the horizontal axis of the Guidelines grid, ranging from Category A, representing offenders with no or minimal criminal history, to Category E representing those with six or more criminal history points. The categories are: A (0 to .50 points); B (.75 to 1.75); C (2 to 3.75); D (4 to 5.75); E (6+).

Table 2: Compliance Rates by Offense and Criminal History Category, 2009 (N=4,699)

Offense	A (0 to .5)	B (.75 to 1.75)	C (2 to 3.75)	D (4 to 5.75)	E (6+)
Sex Offenses	95.2 N=42	69.2 N=13	74.4 N=43	100.0 N=2	100.0 N=10
Violent Offenses	86.3 N=460	90.5 N=243	83.6 N=269	81.0 N=84	94.8 N=58
Weapons Offenses	96.1 N=361	80.6 N=129	81.9 N=215	77.8 N=45	78.3 N=23
Drug Offenses	95.3 N=579	91.7 N=507	87.1 N=496	81.9 N=149	71.6 N=67
Property Offenses	96.6 N=175	90.4 N=94	79.8 N=84	91.3 N=23	70.0 N=40
Other Offenses	89.0 N=127	89.9 N=138	78.6 N=168	81.3 N=32	87.0 N=23

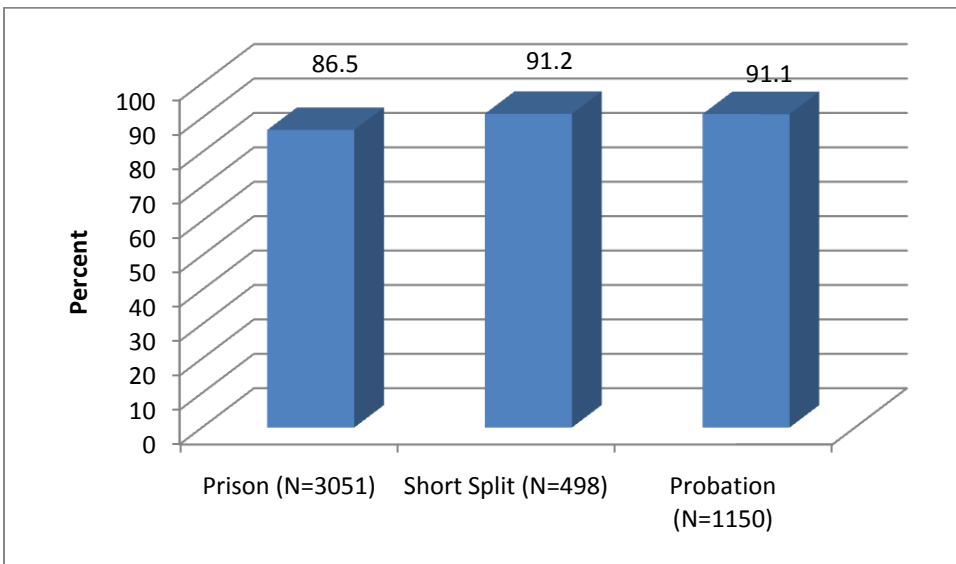
IV. Compliance by Type of Sentence Imposed

This section describes the compliance rates by the type of sentence imposed, including prison, short-split and probation.

Figure 8 (on Page 16) shows that the compliance rates by the types of sentences imposed on felony counts in 2009 did not reveal any significant differences. The highest percentage of compliance among the three types of sentences imposed was for short split sentences at 91.2%, and probation sentences at 91.1%. The compliance rate for prison sentences was lower at

86.5%. Seventy-six percent of non-compliant prison sentences were downward durational, whereas, by definition, all of the non-compliant probation and short split sentences were dispositional non-compliant sentences.

Figure 8: Compliance by Type of Sentence Imposed, 2009 (N=4,699)



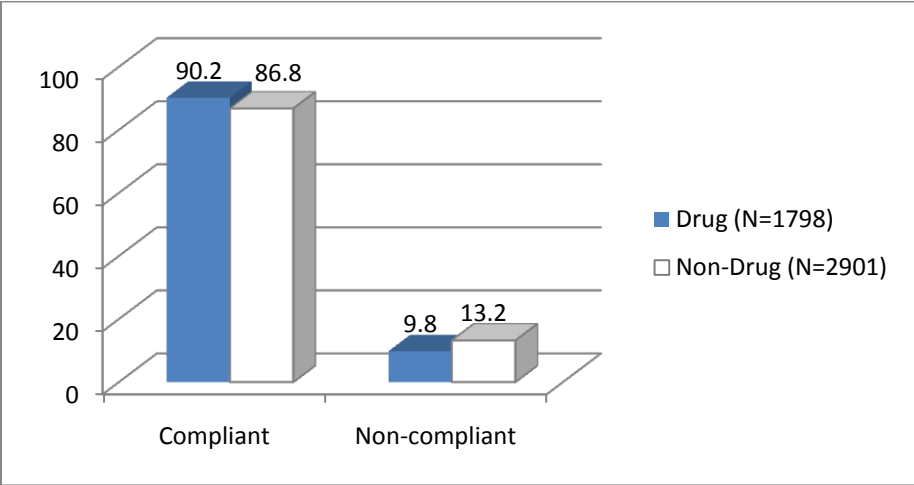
When the type of sentence was examined by major offense category, Table 3 (on Page 17) shows some interesting findings. Probation sentences for violent offenses had 23.7% non-compliance rate while short split sentences for weapons offenses show a non-compliance rate of 25.0%. These non-compliant sentences represented either probation sentences that were imposed in prison or short split sentence eligible boxes or short split sentences that were imposed in prison only boxes, indicating that some judges used their discretion to impose a non-prison sentence for these particular counts.

Table 3: Compliance Rates by Offense and Type of Sentence Imposed, 2009 (N=4,699)

Offense	Overall	Prison	Short Split	Probation
Sex Offenses	85.3 N=110	84.2 N=101	100.0 N=4	80.0 N=5
Violent Offenses	85.3 N=1114	87.1 N=950	88.1 N=67	76.3 N=97
Weapons Offenses	85.6 N=773	83.8 N=582	75.0 N=40	95.4 N=151
Drug Offenses	90.0 N=1798	84.6 N=805	92.9 N=297	95.1 N=696
Property Offenses	88.9 N=416	89.2 N=268	100.0 N=46	83.3 N=102
Other Offenses	85.0 N=488	87.8 N=345	88.6 N=44	83.8 N=99

Figure 9 reveals that the compliance rates for the master grid was slightly lower (86.8%) than the compliance rates among drug offenses (90.2%).

Figure 9: Compliance by Sentencing Grid, 2009 (N=4,699)



Compliance rates by severity of offense for all 12 drug and non-drug severity groups were over 80%, however, there were some notable differences (Figure 10 on Page 19). Compliance rates for sentences imposed on offenses in Master Groups 3 through 7 were relatively lower (ranging from 81.4% to 85.8%) than found in other severity groups. These particular offense severity groups contained many of the aforementioned violent and sex offenses that were sentenced “outside the box.”

Figure 10: Compliance by Offense Severity Group, 2009 (N=4,699)

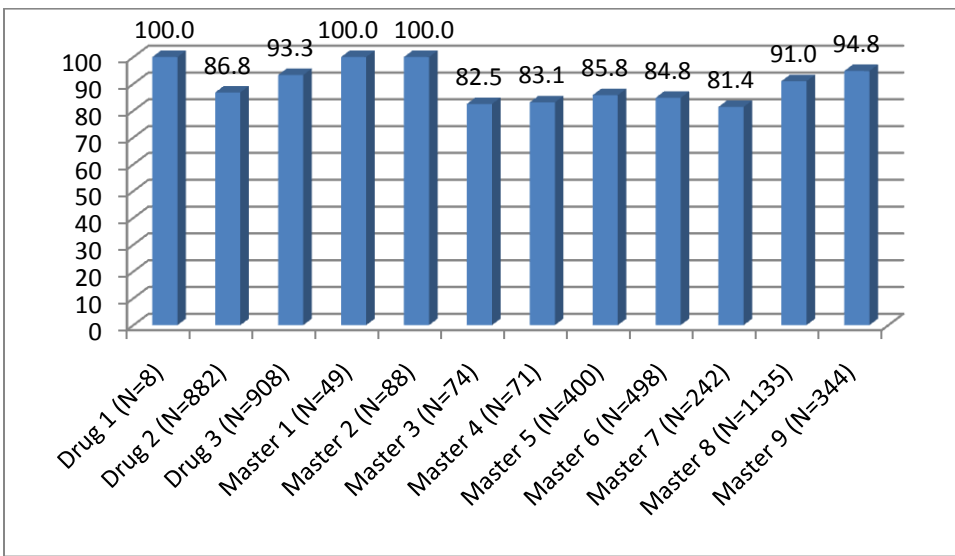


Table 4 (on Page 20) displays compliance rates by offense severity group and criminal history category in each box on the felony sentencing grids. It shows consistently high compliance (over 85%) across most boxes. Some specific boxes with relatively low compliance rates (under 80% and with 20 or more counts) included offenders with more serious criminal history. When the age of offender is factored into the analysis, the majority of downward non-compliant sentences were imposed on offenders who were 40 years of age or older. For example, 72.2% of the durational downward non-compliant sentences in box Drug 2E were imposed on offenders who were 40 years of age or older and 61.4% of the durational downward non-compliant sentences in Master 7E were imposed on offenders who were 40 years of age or older.

Table 4: Compliance Rates by Severity Group and Criminal History Category, 2009 (N=4,699)

Severity Group	Criminal History Category				
	A (0 to .5)	B (.75 to 1.75)	C (2 to 3.75)	D (4 to 5.75)	E (6+)
	100.0	N/A	N/A	100.0	N/A
Drug 1	N=6	N=0	N=0	N=2	N=0
	93.6	90.0	85.1	83.7	75.7
Drug 2	N=235	N=239	N=289	N=86	N=33
	96.4	94.0	90.8	93.4	81.3
Drug 3	N=338	N=266	N=207	N=61	N=32
	100.0	100.0	100.0	100.0	N/A
Master 1	N=14	N=11	N=20	N=4	N=0
	100.0	100.0	100.0	100.0	100.0
Master 2	N=32	N=13	N=31	N=10	N=2
	75.9	100.0	89.3	100.0	100.0
Master 3	N=29	N=2	N=28	N=12	N=7
	81.3	87.5	93.8	100.0	100.0
Master 4	N=32	N=16	N=16	N=3	N=4
	83.6	84.8	82.1	72.7	100.0
Master 5	N=140	N=66	N=151	N=33	N=10
	82.2	85.5	81.8	90.9	92.3
Master 6	N=219	N=110	N=121	N=22	N=26
	97.8	72.4	84.8	78.6	70.8
Master 7	N=46	N=58	N=86	N=28	N=24
	97.8	91.3	82.6	74.1	80.9
Master 8	N=535	N=231	N=247	N=54	N=68
	98.3	92.0	81.0	80.0	93.3
Master 9	N=118	N=112	N=79	N=20	N=15

Conclusions

Although the Sentencing Guidelines in the District of Columbia are voluntary, overall judicial compliance of 88.1% remained relatively high for felony sentences imposed in 2009. This percentage is consistent with previously reported annual compliance rates since 2006. The majority of non-compliant sentences were downward durational, meaning that non-compliant prison sentences imposed were often shorter in length than the minimum recommended range.

Analyses of compliance rates by factors such as age of offender, criminal history, and type of offense reveals some variation. Compliance rates were slightly lower for sentences imposed on older offenders with higher criminal history scores. Similar to the overall compliance rate, most of these non-compliant sentences across demographic, criminal history, and offense categories were downward durational, meaning that the prison sentences imposed were shorter than the recommended range. These findings suggest that although compliance was high across most categories, judges, in some cases, use their discretion to impose sentences under certain circumstances that are outside the recommended guidelines. Future compliance reports will include an analysis of the reasons for non compliance. This additional information will then provide further insight on the factors that result in the imposition of “outside the box” or non-complaint sentences.