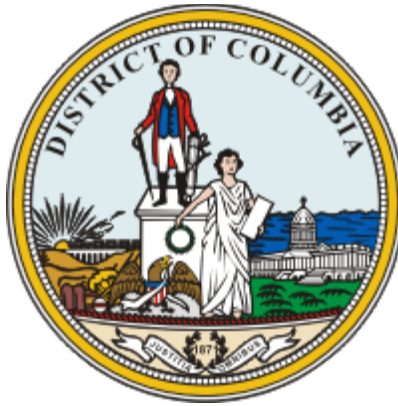




DISTRICT OF COLUMBIA
SENTENCING COMMISSION

2016 ANNUAL REPORT



APRIL 27, 2017

DISTRICT OF COLUMBIA SENTENCING COMMISSION
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Mission Statement

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



District of Columbia Sentencing Commission

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Hon. Frederick H. Weisberg
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Barbara S. Tombs-Souvey
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Cedric Hendricks, Esq.
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Hon. Milton C. Lee
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Molly Gill, Esq.
Earl J. Silbert, Esq.

Non-voting members:
Maria Amato, Esq.
Michael Anzallo
Judi Simon-Garrett, Esq.
Hon. Charles Allen
Stephen J. Husk

April 27, 2017

The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
John A. Wilson Building, Suite 504
1350 Pennsylvania Avenue NW
Washington, DC 20004

Dear Chairman Mendelson:

In compliance with its statutory obligation, the District of Columbia Sentencing Commission respectfully submits its 2016 Annual Report. This year's report provides an overview of felony sentences imposed by the Superior Court from January 1, 2016, through December 31, 2016, and also highlights certain sentencing trends from 2010 through 2016.

In 2016, judicial compliance with the Sentencing Guidelines was over 97%, the highest level of compliance recorded since the Guidelines were implemented in 2004. When read in conjunction with the Commission's recent multi-year Evaluation Report submitted to the Council and Mayor in March of 2016, this 2016 Annual Report shows that the Guidelines are working as they were intended, with a high degree of acceptance by the Judges, prosecutors and defense counsel alike. As a result, the Guidelines have reduced unwarranted disparity and have increased the certainty and adequacy of punishment, while at the same time making sentencing more transparent for persons charged with crime, crime victims, and the general public. The District of Columbia has much to be proud of in the sentencing reforms that have been made since 2000, and the Commission remains committed to its mission of promoting fair and consistent sentencing policies that will enhance public safety and help build public confidence in the criminal justice system.

Respectfully Submitted,

Frederick H. Weisberg, Chairman

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MEMBERSHIP OF THE DISTRICT OF COLUMBIA SENTENCING COMMISSION

As of April 27, 2017

The Honorable Frederick H. Weisberg, Chairman
Superior Court of the District of Columbia

The Honorable Danya D. Dayson
Superior Court of the District of Columbia

The Honorable Milton C. Lee
Superior Court of the District of Columbia

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EXECUTIVE SUMMARY

Throughout 2016, the District of Columbia Sentencing Commission continued its ongoing effort to improve data quality and data access. This work has enhanced the agency's capacity to both monitor and analyze sentencing trends, and determine judicial compliance with the District's Voluntary Sentencing Guidelines. The Commission's improved analytic capabilities allow for more in-depth analysis of the Guidelines and enable data-driven policy recommendations.

In 2016, the District experienced the first increase in the number of felony cases and offenders sentenced in the Superior Court since 2010. While the number of cases sentenced increased, compliance with the Guidelines remained very high. Over 97% of all felony sentences imposed this year were compliant with the Guidelines, demonstrating the highest rate of compliance the Commission has observed since the implementation of the Guidelines. This high compliance rate also indicates wide spread acceptance of the Guidelines by criminal justice practitioners and the judiciary.

Over the past year, the Commission also focused on completing its first multi-year Guidelines Evaluation Report. The report contains an in-depth analysis of the impact of the Guidelines on sentencing in the District and identifies areas for further research by the Commission. Released in March 2017, the Commission's Evaluation Report can be found at <https://scdc.dc.gov/service/guidelines-evaluation-report>.

Changes in Data Reporting

Previously, the various data analyses presented in the Commission's Annual Report were based on a combination of "live" and annual "snap shot" data, which represents data that is frozen at the end of each calendar year. Beginning in 2016, the Commission will only use annual "snap shot" data for analysis and reporting purposes in the Annual Report, given that this data allows for the most accurate year to year comparison of sentencing data, as well as identifying the impact of any modifications to the Sentencing Guidelines.

This decision means that there may be some discrepancies between the data reported in the 2016 Annual Report and data presented in the Commission's previous Annual Reports. However, the data in the 2016 Annual Report is more reflective of actual sentencing trends that occurred during previous years when compared to live data, which is continually updated.

2016 Sentencing Trends

In 2016, the D.C. Superior Court sentenced 1,611 individuals in 1,683 felony cases, consisting of 2,201 felony counts. This represents an 8% increase in the number felony counts sentenced compared to 2015. The increase is driven primarily by an increase in the number of Weapon and Drug offenses sentenced. In 2016, both felony Drug offenses and Weapon offenses sentenced

show a 45% increase when compared to the number of felony Drug and Weapon offenses sentenced in 2015. Consistent with 2014 and 2015, Offense Severity Group M8 accounted for the highest percentage (32.6%) of offenses sentenced by Offense Severity Group in 2016.

Overall, Violent offenses remained the most common offense type sentenced in 2016, representing 31% of all cases sentenced. The number of sentences in the Violent offense category peaked in 2012, but have demonstrated a gradual decline from 2013 through 2015, before increasing by 3.4 % in 2016. Within the Violent offense category, Robbery was the most frequent offense sentenced; representing 39.7% of all offenses sentenced in the Violent offense category.

In contrast to previous years, a prison sentence was not imposed for the majority of cases sentenced, with only 46% of cases receiving a prison sentence. This decline is partially due to the significant increase in the number of drug offenses for which probation or a short split sentence is an available sentencing option in the vast majority of grid boxes on the Drug Grid. However, a prison sentence was still imposed more often than any other specific sentence type, with a short split sentence imposed in 18% of cases and a probation sentence imposed in 36% of cases.

Offender demographics remained consistent with previous years, with males representing 91.6% of offenders sentenced. Despite the large difference in the gender of offenders sentenced, the data indicates that there are some offense types in which male and female offenders share similar proportionality in sentencing. Approximately 25% of both males and females were sentenced for Drug offenses. For both male and females, violent offenses represented the highest proportion of offenses sentenced in 2016. Females were more likely to be sentenced for a Violent offense or an Other offense; males were more likely to be sentenced for a Weapon offense. Similar to prior years, the average Criminal History score for males (1.7) was higher than for females (1.0).

Offenders age 18 to 30 account for 58.5% of all offenders sentenced in 2016, almost 16% more than the 42.7% they represented in 2010. Over the same time period, the percentage of offenders sentenced aged 41-50 has decreased from 23.8% to 10.7%. Similar to previous years, very few felony cases sentenced involved offenders over the age of 60, representing only 1.9% of offenders sentenced in 2016.

Guideline Compliance

As noted earlier, in 2016, over 97% of all counts sentenced were compliant with the Guidelines, representing the highest compliance rate observed by the Commission since the inception of the Guidelines in 2004. This percentage is consistent with yearly compliance rates, which have been near or above 90% since the implementation of the Guidelines. The current high compliance rate is attributable to a combination of factors including: (1) the length of time the Guidelines have

been in place; (2) modifications to the Guidelines to ensure the recommended sentence is appropriate; and (3) improved data collection and compliance validation practices.

In 2016, compliant in-the-box sentences accounted for 90.3% of all sentences imposed, meaning that the sentence imposed was within both the Guidelines recommended range and sentence type(s). In addition, the Commission recorded only 53 non-compliant sentences in 2016, with all but two of those sentences representing a sentence less than the recommended Guideline sentence. This represents a 2.5% decrease in the percentage of non-compliant sentences from 2015 to 2016. Compliant departures occurred in 2.4% (50 counts) of all felony counts sentenced in 2016, in which the sentencing judge departed from the recommended Guideline sentence by using one of the available departure factors.

Annual Report Key Findings

1. The number of felony cases and offenders sentenced has increased for the first time since 2010 (Page 20).
2. Prison sentences were imposed for less than half all felony cases for the first time since 2010 (Page 22).
3. Similar to 2015, offenses in the M8 severity group accounted for 32.6% of all felony cases sentenced in 2016 (Page 25).
4. In 2016, the Commission observed a 5% increase in the percentage of both Drug and Weapon counts sentenced. The remaining offense categories, Homicide, Sex, Property, Violent, and Other crimes, remained relatively stable between 2015 and 2016 (Page 27).
5. Violent crime was the dominant offense category in 2016, accounting for 31% of all non-drug felony cases. Within the Violent offense category, Robbery was the most frequent specific offense sentenced; representing 39.7% of all offenses in the category (Page 26).
6. Among both male and female offender cases sentenced, Violent offenses were the most common offense type, followed by Drug offenses. For the first time since 2010, Violent offenses surpassed the Other offense category as the dominant female offense category (Page 31).
7. During 2016, 58.5% of all offenders sentenced were between the age of 18 and 30 (Page 33).
8. For the 15-17 age category, there has been a relatively steady increase in the number of cases sentenced between 2010 and 2016. The category contained 1.2% of cases sentenced in 2010 and 3.6% in 2016 (Page 33).
9. The rate of judicial compliance with the Sentencing Guidelines has remained above 90%, since 2012. The 97.5% compliant rate in 2016 was the highest rate ever observed by the Commission since the inception of the Guidelines in 2004 (Page 43).
10. In 2016, in-the-box compliance rate was 90.3%. This shows that less than 10% of all felony counts initially sentenced fell outside the recommended Guideline sentence duration and disposition type (Page 45).
11. When the Court did not utilize the Guidelines, the sentence imposed was less severe than the recommended Guidelines range and/or sentence type for 96.2% of counts sentenced (Page 48).

Table of Abbreviations and Acronyms

Term	Definition
CCR	Criminal Code Revision
CCRC	D.C. Criminal Code Reform Commission
CH	Criminal History
CJCC	District of Columbia Criminal Justice Coordinating Council
Commission	District of Columbia Sentencing Commission
Council	Council of the District of Columbia
Court	Superior Court of the District of Columbia
COV(s)	Crime(s) of Violence
CSOSA	Court Services and Offender Supervision Agency for the District of Columbia
Dist.	Distribution of a Controlled Substance
District	District of Columbia
Evaluation Project	District of Columbia Sentencing Guidelines Evaluation Project
FY	Fiscal Year
Guidelines	District of Columbia Voluntary Sentencing Guidelines
GRID System	The Guidelines Reporting and Information Data System
GSS	The Commission's GRID Score System
IJIS 12.1	District of Columbia Integrated Justice Information System Outbound Data Feed
JUSTIS	District of Columbia Justice Information System
OSG	Offense Severity Group
PCP	Phencyclidine
PWID	Possession with Intent to Distribute a Controlled Substance
Rule 11(c)(1)(C)	Superior Court Rules of Criminal Procedure Rule 11(c)(1)(C)

CHAPTER ONE

THE COMMISSION AND ITS WORK

I. The Commission's Legislative Mandate and Duties

A. Legislative Mandate

The D.C. Sentencing Commission (the Commission) has two primary statutory responsibilities: (1) to monitor the implementation and use of the District of Columbia Voluntary Sentencing Guidelines (the Guidelines); and (2) to review and analyze data on sentencing practices and trends in the District of Columbia.¹ As part of its mandate, the Commission is responsible for collecting data from the Superior Court (the Court) and from the Court Services and Offender Supervision Agency (CSOSA) to identify and address issues and assess compliance with the Guidelines, and to monitor historical and emerging sentencing trends. The Commission is also required to incorporate into the Guideline structure each new felony offense or sentencing provision enacted by the Council of the District of Columbia (the Council).²

B. Commission Duties

In addition to its overarching mandate, the Commission has the following duties under D.C. Code § 3-101(b) (2016):

1. Promulgate, implement, and revise a system of voluntary sentencing guidelines for use in the Superior Court of the District of Columbia designed to achieve the goals of certainty, consistency, and adequacy of punishment, with due regard for the:
 - a. Seriousness of the offense;
 - b. Dangerousness of the offender;
 - c. Need to protect the safety of the community;
 - d. Offender's potential for rehabilitation; and
 - e. Use of alternatives to prison, where appropriate;
2. Publish a manual containing the instructions for applying the voluntary guidelines, update the manual periodically, and provide ongoing technical assistance to the Court and practitioners on sentencing and sentencing guideline issues;

¹ The legislation governing the Commission can be found at D.C. Code § 3-101 (2016), *et seq.*

² A complete history of the Commission can be found on the Commission website at <https://scdc.dc.gov/node/1108916>.

3. Review and analyze pertinent sentencing data and, where the information has not been provided in a particular case, prompt the judge to specify the factors upon which he or she relied in departing from the guideline recommendations or for imposing what appears to be a noncompliant sentence;
4. Conduct focus groups, community outreach, training, and other activities designed to collect and disseminate information about the guidelines;
5. Review and research sentencing policies and practices locally and nationally, and make recommendations to increase the fairness and effectiveness of sentences in the District of Columbia; and
6. Consult with other District of Columbia, federal, and state agencies that are affected by or address sentencing issues.

C. Transferring the Commission's Criminal Code Revision Mandate

Starting in 2006, the Commission had an additional mandate to examine the District's criminal code and make recommendations to provide for a uniform and coherent body of criminal law.³ On October 1, 2016, the Council established the D.C. Criminal Code Reform Commission (CCRC) to focus solely on criminal code revision (CCR) and transferred the Commission's code revision mandate, responsibilities, and staff to the new CCRC. As a result, the Commission's formal name was changed from the D.C. Sentencing and Criminal Code Revision Commission to the D.C. Sentencing Commission.

II. The Commission's Composition

A. Commission Membership

The Commission is composed of 17 members: 12 voting members and five non-voting members.⁴ Its membership includes representatives from various criminal justice agencies, the judiciary, academic and research institutions, practicing attorneys, and the public. This diverse membership provides a wide range of perspectives in the development of sentencing policy.

³ See Advisory Commission on Sentencing Act of 2006, D.C. Code § 3-101.1 (2007).

⁴ Prior to October 1, 2016, the Commission consisted of 20 members: 15 voting members and five non-voting members. Three of the Commission's membership positions had been added by the Council to assist the Commission with its CCR mandate. When the CCR mandate was transferred to the CCRC, the Council removed those three positions. The Commission thanks Donald Braman, Ronald Gainer, and Paul Butler for their years of service and constant efforts on behalf of both the Commission and the District.

The voting members of the Commission include:

- Three judges of the Superior Court, 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 CSOSA 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 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;
- Two citizens of the District, one of whom is nominated by the Mayor subject to confirmation by the Council, and the other who is appointed by the Council.

The non-voting members of the Commission are:

- The Chairperson of the Council committee that has oversight of the Commission;
- 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; and
- The Chairperson of the United States Parole Commission or his or her designee.

B. Commission Staff

1. Commission Staff Members

As of December 31, 2016, the Commission staff consisted of:

Barbara Tombs-Souvey
Executive Director

Linden Fry, Esq.
General Counsel

LaToya Wesley, Ph.D.
Senior Statistician

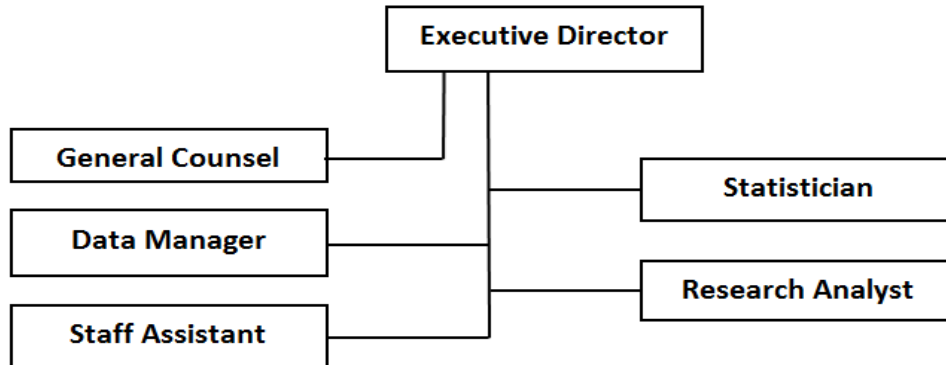
Mia Hebb
Staff Assistant

Miatta Sesay
Data Manager

Matthew Graham
Research Analyst

2. Organizational Structure

Figure 1: Sentencing Commission Organizational Chart



III. The Commission's Budget

In Fiscal Year (FY) 2016 and FY 2017, the Commission's entire budget originated from District of Columbia local funds. The Commission did not receive any capital or grant funds during this time.

Table 1: The Commission's FY 2017 Budget (dollars in thousands)

Personnel Services (Salaries and Benefits)	\$659
Non-Personnel Services	\$428
Total Budget	\$1,087

Table 2: The Commission's FY 2016 Budget (dollars in thousands)

Personnel Services (Salaries and Benefits)	\$1,183
Non-Personnel Services	\$427
Total Budget	\$1,610

Between FY 2016 and FY 2017, the Commission's budget decreased by 32.5%. The decrease in funding was the direct result of transferring CCR duties and employees from the Commission to the CCRC.

IV. The Commission's Work

A. Commission Activities

The full Commission met six times in 2016 to address Guidelines, CCR, criminal justice, and agency issues. All 2016 Commission meetings were open to the public.

The Commission met on the following dates in 2016:

January 19 th	June 21 st
February 16 th	September 20 th
April 5 th	October 18 th

The minutes of the Commission's public meetings are available online at the Commission's website, located at <http://scdc.dc.gov>.

Over the past year, the Commission made changes to the Guidelines, released several publications, including the 2015 Annual Report, the 2016 Guidelines Manual, and the Criminal Code Revision Project Semi-Annual Report on the status of the Criminal Code Revision Project. Additionally, the Commission concentrated its efforts on two major projects. The first was the D.C. Criminal Code Revision Project Report to the District of Columbia Council and Mayor, which set forth the Commission's CCR work prior to the project's transfer. The second, and most intensive, was the completion of the multi-year District of Columbia Sentencing Guidelines Evaluation Project (Evaluation Project).

Interested parties are always encouraged to attend Commission meetings. The Commission publishes meeting dates in advance in the D.C. Register and on the Commission's website. The Commission's website also includes an agenda for each upcoming meeting. Commission meetings are usually held on the third Tuesday of each month in One Judiciary Square, 441 4th Street, Suite 430 South, NW, Washington, D.C. 20001.

B. Committee Activities

In addition to the meetings of the full Commission, several working committees met on a regular basis or as needed to formulate recommendations on specific sentencing, data, and criminal code policy issues for action by the full Commission. The following represents an overview of the Commission's committee structure and recent work.

1. Criminal Code Revision Committee

The Criminal Code Revision Committee focused on accomplishing the Commission's legislative mandate to prepare comprehensive CCR recommendations for the Council and the Mayor. Working with Commission's CCR staff, the Committee reviewed and evaluated the District's criminal statutes and made recommendations to the Commission on revisions to the criminal code. The Committee's role in this project concluded when the Commission's CCR mandate expired on September 30, 2016 and its CCR duties, staff, and work were transferred to the new CCRC. However, prior to the transfer of the project, the Committee developed and the Commission approved a Final Report on the Criminal Code Revision Project for submission to the Council and Mayor. The Final Report contained a description of Commission's CCR accomplishments and summarized the scope of Commission's work on the Project to date. Appendices to the Report provided details on the work produced by the Committee and staff. However, because CCR work is ongoing, the Commission did not recommend any specific legislative action based on the Committee's extensive work.

2. Research Committee

The Research Committee's 2016 work focused on developing and finalizing the Guidelines Evaluation Report. In 2014, after ten years of practice under the Guidelines since they were first piloted in 2004, the Commission determined that the time had come to undertake an in-depth review of how the Guidelines were operating and to identify any areas where that may require updating.

The Committee began initial work on the Guideline Evaluation Project in 2014. Its work on the Guideline Evaluation Project concluded when a final draft of the Guideline Evaluation Report was delivered to the Commission on December 20, 2016.

The Guideline Evaluation Project is a comprehensive multi-year research study that includes three major components: 1) a comprehensive evaluation of sentencing data from 2010 through 2015 to assess whether the Guidelines are achieving their statutory goals; 2) a comparative analysis of sentencing practices both before and after the implementation of the Guidelines; and 3) the development of research-based recommendations regarding potential modifications to sentencing policy and/or the Guidelines. Each component was included in a final draft of the report submitted to the Commission.

The Commission submitted the Guideline Evaluation Report to the Council and the Mayor on March 31, 2017.⁵ The study determined that the Guidelines are operating in practice as they were intended.

3. Guidelines Implementation Committee

The primary aim of the Guidelines Implementation Committee (formerly the Ranking Committee) is to develop and submit proposals to the Commission for new or modified criminal offense rankings and other possible Guidelines rule changes. The Committee also evaluates potential policy changes that may affect the Guidelines or other sentencing practices and oversees all changes to the Guidelines Manual.

In 2016, the Guidelines Implementation Committee addressed possible changes to the Guidelines Manual and ranked two new offenses. The changes to the Guidelines Manual and the new offense rankings are discussed in Chapter Two of this Report.

C. Supporting Practitioners, Policy Makers, and the Public

The Commission and its staff support criminal justice practitioners, policy makers, and the public on a daily basis. This support is provided in the form of: 1) releasing print and electronic publications; 2) hosting an interactive website containing current information on the Guidelines, the Commission, and Court sentencing practices; 3) completing data requests; 4) providing Guidelines training and education sessions; 5) responding to Guidelines inquiries; and 6) collaborating with other criminal justice partners.

1. Publications

In 2016, the Commission published the following documents:

- The 2015 Annual Report
- The 2016 Voluntary Sentencing Guidelines Manual
- Semi-annual report to the Council regarding the progress of the Criminal Code Revision Project and the Report on Enactment of D.C. Code Title 22 and Other Criminal Code Revisions (September 2015)
- Final Report on the Criminal Code Revision Project for the Council and Mayor

⁵ A copy of the Evaluation Report is available on the Commission's website at <https://sdc.dc.gov/release/dc-sentencing-commission-releases-guidelines-eval-report-0>.

2. The Website

The Commission utilizes its website as an integral part of its ongoing effort to increase transparency and public awareness about the Commission's activities. The website provides detailed information about the Guidelines and makes current sentencing data and Commission research easily accessible. Visitors can now find a wealth of materials and Guidelines resources at <http://scdc.dc.gov>.

The Commission's website resources include:

- Sentencing Commission updates, press releases, and news;
- A Data Dictionary with definitions for all publically available shared data;
- A Dataset for all 2015 Felony Sentences (without case specific identifying information);
- Data and charts displaying information about felony sentences and sentencing trends;
- The date, location, and agenda for the next Commission meeting;
- Guidelines updates and alerts;
- An electronic copy of the current Guidelines Manual, as well as all prior versions of the Manual;
- The Guidelines Master and Drug Grids;
- Minutes from prior Commission meetings;
- A direct link to send questions to the Executive Director;
- Information on how to contact the Commission, request a training session, ask questions about sentencing data, or receive assistance applying the Guidelines;
- A chronology of the Guidelines and the Commission;
- A list of Commission members;
- Sentencing data request forms;
- A frequently asked questions (FAQ) section that provides detailed answers to common Guidelines questions;
- A glossary of Guidelines and sentencing terminology;
- Self-guided trainings;
- All recent and historic Sentencing Commission publications;
- Employment opportunities with the Commission; and
- Open Government and Freedom of Information Act materials.

Over the course of the past five years, the Commission staff has continually expanded the features available on the agency's website. In 2016 the Commission took a major step forward by adding a complete data set of all 2015 felony sentences to the website. This dataset, with offender identifying information removed, enables any researcher, student, policy maker, or member of the public to not only access the data directly but also to conduct any type of analysis

the individual chooses, to better understand sentencing trends and patterns in the District. As a result of the additions and improvements made to the website, web traffic has dramatically increased.⁶ The Commission's website received 23,642 visits in calendar year 2016. This was an increase over the 14,050 visits the website received in calendar year 2015 and 796 website visits in calendar year 2011.

3. Data Requests

The Commission's data collection and analysis goes beyond what is presented on its website or contained in the Annual Report or research papers. On a regular basis, the Commission responds to requests for sentencing data and analysis from individual Commission members, Councilmembers, the Mayor's office, other government agencies, organizations, educational institutions, legal practitioners, and the general public. Following the implementation of the Guidelines Reporting and Information Data System (the GRID System) and the Commission's enhanced ability to analyze data, the Commission has seen a substantial increase in data requests made by Commission members, government agencies, the media, researchers, other parties, and individuals. Information pertaining to data requests is available on the Commission's website.

Data shared by the Commission is available in two formats: aggregate data and felony data sets void of identifying information about offenders or ex-offenders. The Commission does not provide individual case sentencing information or information that would allow for the identification of offenders or ex-offenders.

In calendar year 2016, the Commission received 19 substantial data requests, which required 496 staff hours to respond.

The following are examples of data requests the Commission received and responded to in 2016:

- The number of times animal cruelty has been sentenced;
- The number of times the sentence type imposed by the Court was different from the recommendation made by CSOSA;
- The frequency, sentence type, and sentence length for all felony charge codes sentenced;
- The number of sentences imposed under the Youth Rehabilitation Act;
- A summary of sentencing trends for assault offenses;
- The number of homicide cases disposed; and
- The number and demographics for offenders age 18 or younger sentenced to 15 years or more incarceration.

⁶ The Commission defines website traffic as unique website visits; it does not count repeat page hits by the same visitor.

4. Guidelines Training and Education Sessions

The Commission regularly conducts group and individual Guidelines training sessions throughout the year. In calendar year 2016, Commission staff provided in-person Guidelines training to more than 226 individuals, an increase from the 160 people trained in 2015. Anyone interested in arranging an individual or group-training session should contact the Commission.

In addition to in-person trainings, the Commission's expanded website has a module devoted to providing online trainings and resources that are available at all times. Currently, the Commission has the following online trainings and educational references available:

- Introduction to Sentencing and the Sentencing Guidelines;
- Basic Voluntary Sentencing Guidelines Training;
- How the Commission Determines Judicial Compliance with the Sentencing Guidelines;
- How to Calculate an Offender's Criminal History (CH) Score;
- DC Voluntary Sentencing Guidelines Quick Reference Sheet; and
- How to Calculate the Criminal History Score for Prior Marijuana Convictions.

5. Responding to Inquiries

Commission staff is available every business day to provide general and specific information about the substance and application of the Guidelines. Staff responds to a wide variety of questions and inquiries from judges, court personnel, government and defense attorneys, CSOSA, the criminal justice community, and members of the public. The Commission provides information varying from the general purpose and basic structure of the Guidelines to assistance with the application of the Guidelines in specific cases. The majority of inquiries are from criminal law practitioners, including CSOSA pre-sentence report investigators, prosecutors, criminal defense attorneys, and Superior Court personnel. Guidelines support is available by e-mail, phone, or via a direct link on the Commission's website.

Commission staff responds to approximately 600 Guidelines and information inquiries every year (572 in FY 2014, 625 in FY 2015 and 615 in FY 2016). Most inquiries involve calculating an offender's CH score, identifying the applicable sentencing range, or determining whether a specific sentence was compliant with the Guidelines.⁷

⁷ It is important to note that assistance using or applying the Sentencing Guidelines received from Commission staff is not legal advice. Any information provided to or received from Commission staff when seeking assistance is not confidential. Inquiry responses are not intended or expected to form an attorney-client relationship, may be provided by non-attorneys, are not binding on the court, and do not constitute the official opinion of the Sentencing Commission. For example, if a practitioner would like to know how an offender's prior out-of-District conviction would factor into his or her total CH score, a Commission staff member will review the applicable Guidelines rule with the practitioner and give examples of prior scorings.

6. Inter-Agency Collaboration

On a regular basis, the Sentencing Commission collaborates with other judicial, criminal justice, and public safety agencies operating in the District. This collaboration allows the Commission to share expertise, data, and knowledge between agencies. This effort includes participation in several citywide workgroups and committees, including:

- Information Technology Advisory Committee (ITAC) – This committee sets the direction, policies, and goals for Justice Information System (JUSTIS) projects in the District.
- Inter-Agency Data Quality Workgroup (IDQ) – This group reviews and analyzes data quality issues for JUSTIS projects in the District.
- Inter-Agency Workgroup (IWG) – This group implements and supports technology projects set by the ITAC.
- Security Group (ISW) – This group addresses issues and concerns surrounding the security of criminal justice information shared among District agencies.
- Criminal Justice Coordinating Council (CJCC) – This agency serves as the forum for identifying issues and their solutions, proposing actions, and facilitating cooperation to improve public safety in the District.
- Gun Stat – This group supports a citywide effort to track gun cases as they progress through the criminal justice system while identifying trends, strengths, and weaknesses of the process.

CHAPTER TWO

VOLUNTARY SENTENCING GUIDELINES

The Commission is required to include in its Annual Report any substantive changes to the Guidelines during the previous year.⁸ This includes any changes to offense severity rankings, the Guidelines recommended sentencing range, or sentencing options, and the rules for calculating an offender's CH score. If the Council enacted legislation during the preceding year creating new offenses or changing penalties for existing offenses, the report must explain how the Commission incorporated those changes into the Guidelines.

Since 2012, the Commission has not modified the Guidelines Master or Drug Grids that set out the recommended sentencing range and options for all ranked felony offenses. In 2016, the Commission ranked two new felony offenses enacted by the Council. Additionally, while the Commission did not make any substantive policy changes to the Guidelines in 2016, it did make several technical changes clarifying the rules set forth in the Guidelines Manual.

I. New Offense Rankings

In 2016 the Commission ranked the following new felony offenses:

- A. Harassing, interfering with, injuring, or obstructing a police animal, significant bodily injury - D.C. Code § 22-861(b)(2)

Maximum Sentence: 10 years imprisonment

Guidelines Offense Severity Group Ranking: Master Group 8

- B. First-degree unlawful publication (Non-Consensual Pornography) - D.C. Code § 22-3053

Maximum Sentence 3 years imprisonment

Guidelines Offense Severity Group Ranking: Master Group 9

⁸ D.C. Code § 3-104(d)(2) states that the Commission's Annual Report shall describe "any substantive changes made to the guidelines during the preceding year, including changes in the: (A) Recommended sentencing options or prison ranges; (B) Ranking of particular offenses; or (C) Rules for scoring criminal history." Further, subsection (d)(3) provides that the Annual Report will also inform "the Council how it has ranked any new felony offense or re-ranked any existing felony offense because of a statutory change or for another reason, and the resulting guideline sentencing options and prison range for each such an offense."

II. Technical Changes to the Guidelines Manual

- A. The Commission made the following significant amendments to the 2015 Guidelines Manual, which the Commission published in June 2015. All references contained in this chapter pertain to the Guidelines Manual.

Chapter 2

1. The language preceding the conviction scoring chart in section 2.2.2 - Scoring Prior Convictions/Adjudications - was adjusted to clarify that out-of-District offenses should be matched to a current D.C. Code offense according to the rules set forth in Section 2.2.6 and then treated as the closely matching District offense.
2. The first paragraph of the section 2.2.4 - Which Prior Juvenile Adjudications Count? - was amended by adding “release in that case” to clarify that the defendant must be detained in a secure/locked facility in the specific case pertaining to the prior adjudication to extend the five-year lapsing window.
3. The substance of the rules previously contained in section 2.2.8 - Offense Severity Group and Scoring of Currently Unranked or Amended Statutes/Offense Severity Group and Scoring of Previously Unranked or Re-Ranked Statutes - was not changed. However, the Section was split into two separate Sections and reorganized for clarity. Section 2.2.8 now addresses the offense severity group and scoring of currently unranked or amended offenses while Section 2.2.9 discusses the offense severity group and scoring of previously unranked or re-ranked offenses.

Chapter 3

1. In section 3.6 - Mandatory Minimums and Statutory Minimums - the paragraph addressing offenses with statutory minimum sentences that are higher than the top of the Guidelines range was changed from an offense specific provision to a general rule. Now, all offenses with a statutory minimum sentence that is higher than the top of the Guidelines range are covered by the rule.

Appendix A and B

1. The Master and Drug Grids now note that the sentencing ranges listed are in months.
2. Assault with Intent to Commit Mayhem was removed from the Master Grid because it is not a common offense, however its offense ranking did not change. The offense remains listed in Appendix C/C-I.

Appendix C and C-I

1. A footnote was added to the Convictions for Violations of Conditions of Release (D.C. Code § 23-1329) entry in Appendix C and C-I to clarify that “This ranking only applies to the instant conviction. The scoring of a prior contempt conviction is discussed in § 2.2.12 (Scoring Contempt Convictions).”

CHAPTER THREE

OVERVIEW OF AGENCY DATA SOURCES AND COLLECTION PROCEDURES

The GRID System enables the Commission to analyze sentencing trends efficiently and determine judicial compliance with the Guidelines. The GRID System utilizes data from three sources: the Court, CSOSA, and individual judges. The Court provides the Commission with all offense, conviction, and sentencing-related data. This data is transmitted from the Court to the Commission electronically through the CJCC Integrated Justice Information System Outbound Data Feed (IJIS 12.1). The Court Services and Offender Supervision Agency officers directly input offender criminal history and demographic information into the GRID System via the GRID Score System (GSS) module. Finally, individual judges provide specific case information by responding to departure inquiries sent out by the Commission.

I. The GRID System

The GRID System is an independent, internet technology-based program developed as a web-based application. It enables the Commission to capture sentencing information, calculate Guidelines compliance, and perform numerous types of data analysis. The GRID System's core capabilities include: receiving and processing information, storing, displaying, and exporting data, calculating compliance, and performing analytics/analysis.

II. Sentencing Data

The Commission captures more than 500 data values that include 232 unique data elements from the Court transmitted through the IJIS 12.1 data feed. This data is directly transferred into the GRID System. Case and offender information updates are performed nightly. For example, when a charge code in a case is updated by the Court, the GRID System will maintain a record of both the new and old charge. The data includes all Court information available from the arrest phase through the sentencing phase, allowing for the analysis of sentencing data at the offender, case, and count level. The Commission classifies this data as "live data," since it changes continually. Improved data access and quality enables the Commission to more easily identify the impact of policy changes and to better craft potential modifications to the Guidelines.

With the development of the GRID System, the Commission created a historic data functionality feature to preserve data captured during each calendar year. The historic data function, referred to as annual "snap shot" data, ensures consistent and accurate reporting of the sentencing practices that took place during a given year. The snap shot data is not influenced by modifications or updates that may occur in a case in subsequent years. As a result, snap shot data is static allowing consistent year-to-year data reporting. For example, the snap shot data allows the Commission to report on a case from 2015 that was modified in 2016 due to a

probation revocation. While GRID records the 2016 sentence modification, the annual snap shot data allows the Commission to report case related activity that occurred during 2015. Therefore, historic data statistics will not change from year to year.

III. Compliance Data

When a sentence falls within the recommended Guidelines range and sentence options, the sentence is deemed compliant with the Guidelines.⁹ The Guidelines utilize two grids, the Master Grid and the Drug Grid, to determine an offender's recommended range and available sentencing options based upon the offense of conviction and the offender's CH score.¹⁰ If a felony sentence is initially determined to be non-compliant, the sentence is evaluated further using a number of different factors to assess if the sentence imposed may be compliant for other reasons. The Commission uses a seven-step process to determine if the sentence imposed is actually compliant with the Guidelines. The GRID System automatically performs the first five steps of the Commission's seven-step compliance process. The two remaining steps, if necessary, are performed manually by staff.

For every felony count sentenced, this seven-step compliance process reviews and verifies that the sentence is within the appropriate grid box, identifies any special guideline sentencing rules or circumstances that may apply, or whether an appropriate departure for the Guidelines occurred. If after this review process, a sentence still appears to be non-compliant, the judge is contacted to verify the non-compliant sentence imposed. A detailed description of the Commission seven-step process to verify judicial compliance can be found in Appendix E.

⁹ See Chapter 4, Section III for more details on calculating Guidelines compliance.

¹⁰ See Appendix A and B for copies of the Master and Drug Grid.

CHAPTER FOUR

SENTENCING TRENDS AND ANALYSIS

This chapter provides an overview of felony sentences imposed by the Court during 2016. The chapter also analyzes the Court's compliance with the Guidelines. Data used for analyses in this chapter include all felony convictions sentenced in the Court between January 1, 2016, and December 31, 2016, without regard to the date of the offense, plea, or verdict. This chapter focuses on felony sentencing patterns by sentence type, offense type, and offender characteristics. The analysis presented does not include sentences for misdemeanor offenses, which are currently beyond the purview of the Commission.

In addition to presenting an overview of sentencing in 2016, this chapter includes a comparison of felony sentencing trends and Guidelines compliance from 2010 through 2016. This broader comparative analysis covering the past seven years highlights changes in sentencing patterns, as well as modifications to the Guidelines during the period.

In order to analyze the multiple aspects of sentencing, data analysis is performed at three levels: count level, case level, and offender level. Count level analysis provides an overview of sentencing practices that occur for each individual felony offense. Case level analysis examines sentencing trends based upon the most severe count for a given case. Lastly, offender level analysis identifies trends related specifically to the felony population sentenced.¹¹

The GRID System changed the way the Commission consumes, processes, and evaluates felony sentencing data.¹² The GRID System updates felony cases on a continuous basis with data transferred nightly from the Court. These updates involve changes to felony cases filed and include such information as charge updates, offender updates, attorney updates, disposition information, and sentence related information. Given the ability to continually update case information, the data contained within the GRID System represents the most current and accurate case information available and is referred to as "live data." Data requests submitted to the Commission are completed using live data since this represents the most current data available.

The Commission determined that in order to have the ability to compare sentencing trends year to year, it is necessary to capture or freeze the data for a given year. This ensures that subsequent data updates or modifications would not be included in a given year's sentencing data, allowing for a true comparison of sentencing trends from year to year. This data is referred to as annual "snap shot" data. The annual snap shot data capture felony sentences from January 1 through December 31 of a given year. The first annual 'snap shot' was taken in 2013 and includes data from 2010 through 2013. Subsequent annual snap shots were taken for 2014, 2015, and 2016.

¹¹ Each case may have one or more counts. Each offender may have one or more cases.

¹² Chapter Three presents a description of the development and implementation of the GRID System.

Previously, the data analysis presented in the Commission's Annual Report was based on a combination of live and snap shot data, depending on the specific type of analysis completed. The Commission has determined that starting in 2016, the Annual Report will use only annual snap shot data for analysis and reporting purposes. Limiting analysis to the snap shot data will ensure the most accurate yearly comparison of sentencing trends, as well as identifying the impact of any modifications to the Guidelines.

The decision to use snap shot data accounts for discrepancies between the data reported in the 2016 Annual Report and data presented in the Commission's previous Annual Reports. However, the data in the 2016 Annual Report is more reflective of actual sentencing trends that occurred during previous years when compared to live data, which continually changes. Moving forward, data presented for prior years will remain unchanged, allowing for a more in-depth analysis of sentencing trends.

The development of the GRID System was a significant undertaking for the Commission, since it represented its first fully automated data system. As with the implementation of any large and complex data system, adjustments and modifications were necessary to address data classification and data quality issues that were identified. The resolution of these issues at times changed how data was reported, resulting in discrepancies with data presented in earlier reports. The key changes to how data is reported include:

- Prior to calendar year 2013, case level sentencing data was analyzed based on the count with the longest sentence. In 2014, the case level analysis was changed to be based on the most severe count in each case, which is determined by the Offense Severity Group (OSG), sentence type, sentence length, and then offense type.
- Prior to 2013, the Commission's reporting of split sentences included both short split and long split sentences.¹³ In 2013, the Commission decided to categorize long split sentences as prison sentences because a long split sentence requires the offender to serve at least the minimum Guideline compliant prison sentence, and this sentencing option is available in prison-only Grid boxes. For data reporting purposes, all split sentences that do not qualify as a short split sentence under the Guidelines' rules are classified as prison sentences.¹⁴ By including long split sentences with prison sentences, the Commission now classifies three types of sentences for the purpose of analysis: probation, short split, and prison sentences.

¹³ A long split sentence is one where the court imposes a prison sentence and suspends execution of some of the sentence, but requires the offender serve more than six months in prison and then places the offender 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 before release to probation is at least as long as the minimum prison term in the grid box.

¹⁴ 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 five years of probation to follow the portion of the prison term to be served.

- In 2014, the Commission removed probation revocations from the yearly analysis of sentences imposed since they do not represent an initial sentence imposed by the court. Probation revocations are tracked and analyzed separately, but are not included in the yearly totals.
- In 2015, the Commission determined that sentences following a remand from the D.C. Court of Appeals would not be analyzed with other sentences imposed for the first time that year. Sentences imposed following a remand do not receive a Guidelines compliance status because the sentences often occur several years after the initial sentence was imposed, and the Commission has no electronically accessible reliable way to determine why the case was remanded by the Court of Appeals.

As with the development and implementation of any new data system, adjustments and modifications are expected. After several years of monitoring, use, and adjustments, the GRID System has moved past the initial implementation phase and has stabilized. Initial data consistency and quality issues have been resolved. Moving forward, the Commission will be able to undertake a more robust analysis of sentencing data.

I. Sentencing Structure

Sentences imposed under the Guidelines are based on two grids: the Master Grid for felony non-drug offenses and the Drug Grid for felony drug offenses.¹⁵ These grids are comprised of two axes: one for the offender's CH score, and one for OSG of each offense for which a sentence is imposed. There are five classifications of CH scores (A to E) on the horizontal axis of the grids in which an offender's CH may be classified, with "A" representing the lowest criminal history classification and "E" representing the highest.¹⁶ The Master Grid classifies offenses into nine OSGs represented on the vertical axis, which decrease in severity from M1 to M9. The Drug Grid has four OSGs, which decrease in severity from D1 to D4. The Commission ranks each felony offense into one of the OSGs according to the level of seriousness associated with that offense. The intersection of an offender's CH score on the horizontal axis and OSG on the vertical axis determines the recommended sentencing options and identifies the range of months for prison sentences.

II. 2016 Sentencing, Offense, and Offender Data

A. Felony Sentences Imposed in 2016

There were 1,611 individuals sentenced for felonies in 2016. These felony offenders were sentenced in 1,683 cases, consisting of 2,201 felony counts. Of the 1,683 felony cases, 664 involved a single felony count and 1,019 involved multiple felony counts. The total number of

¹⁵ See Appendices A and B for the Master Grid and the Drug Grid.

¹⁶ The classifications of CH scores are as follows: A (0 to ½), B (¾ to 1¾), C (2 to 3¾), D (4 to 5¾), and E (6+).

cases increased by 206, or 13.9%, when compared to 2015, and there is a corresponding increase in the number of felony counts and offenders sentenced. This is the first increase in felony sentences since before 2010 (Figure 2).

Figure 2: Felony Sentences by Year (2010-2016)

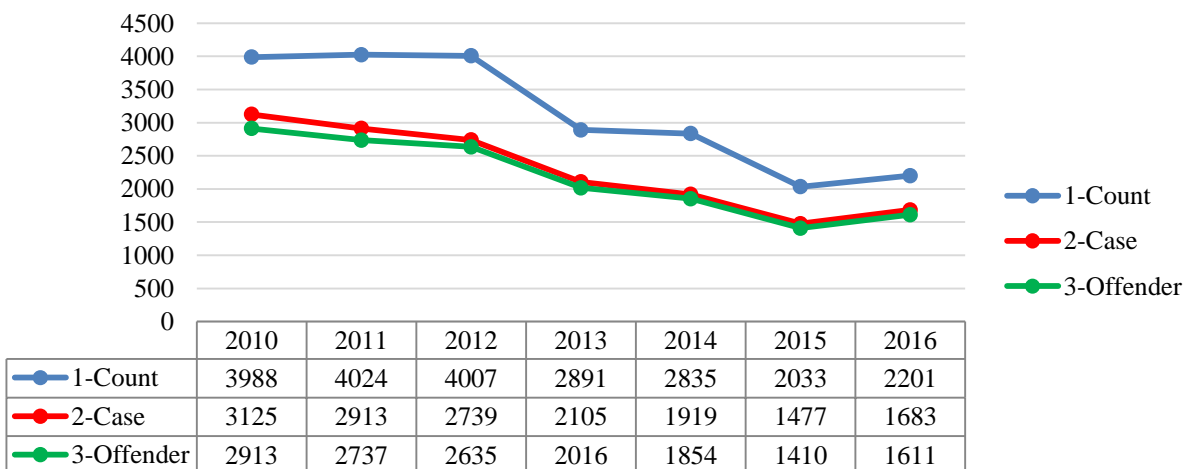
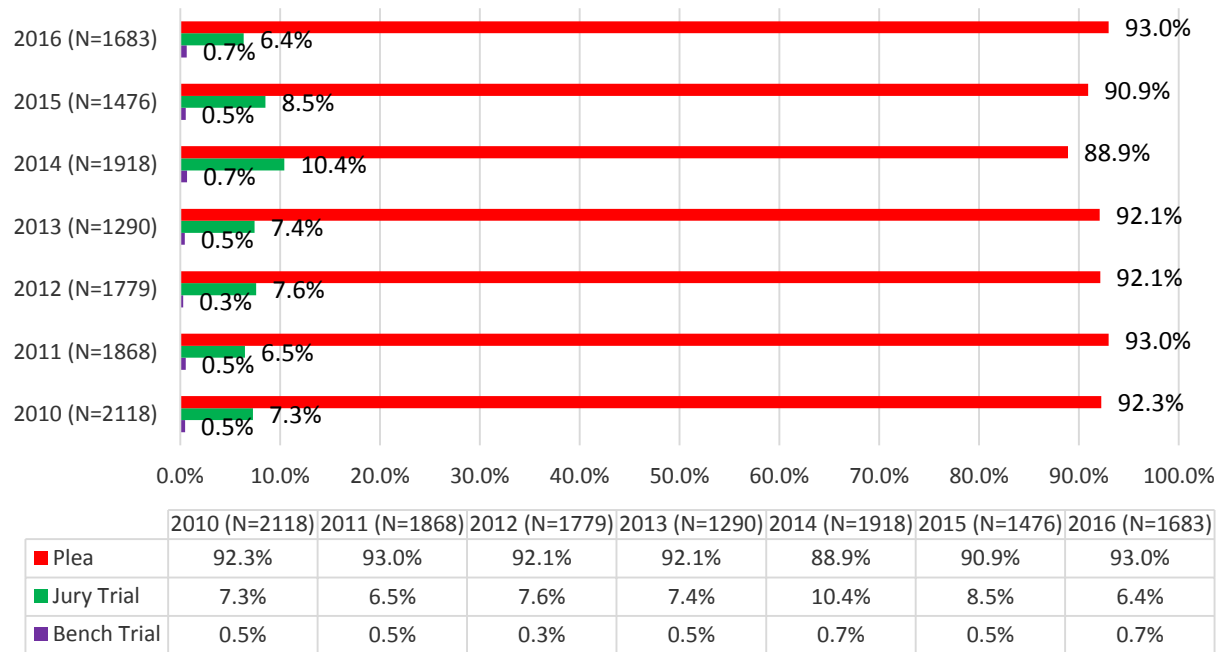


Figure 3 presents the disposition of felony cases in calendar year 2016. Consistent with previous years, the vast majority of the felony cases sentenced in 2016 (93%) were disposed of through guilty pleas. Jury trials have historically accounted for between 6.5% and 10.4% of cases. The 6.4% of cases sentenced following a jury trial represents a very slight decrease from the historical range. The percentage of sentences resulting from bench trials remained relatively constant between 2010 and 2016, never rising above 1% of the felony cases sentenced in any year.

Figure 3: Felony Case by Disposition Type (2016)

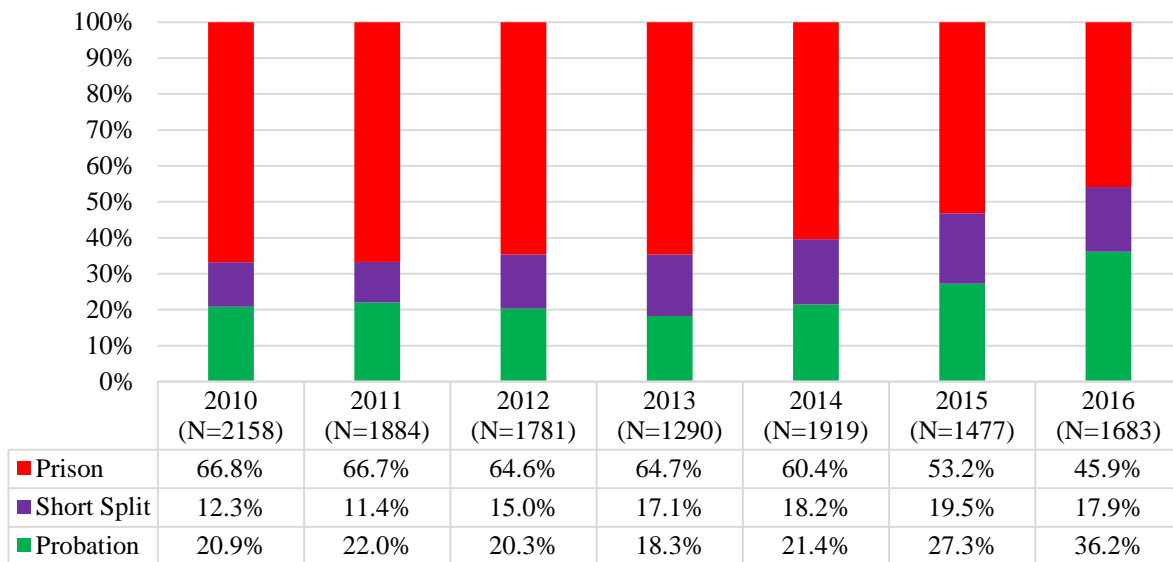


1. Sentence Type

The Commission classifies sentences into three categories: probation, short split, and prison. The percentage of cases sentenced to prison has decreased yearly, from 66.8% in 2010 to 45.9% in 2016, currently accounting for less than half of all felony sentences imposed (Figure 4).

There has been a notable growth in the number of probation sentences in the past two years accounting for 27.3% of sentences in 2015 and increasing to 36.2% of sentences in 2016. Probation sentences have increased by 15.3% since 2010 (Figure 4). Short split sentences have ranged between 11.4% and 19.5% in the 2010-2016 time periods with no consistent pattern of increase or decrease.

Figure 4: Sentence Type, Case Level (2010-2016)



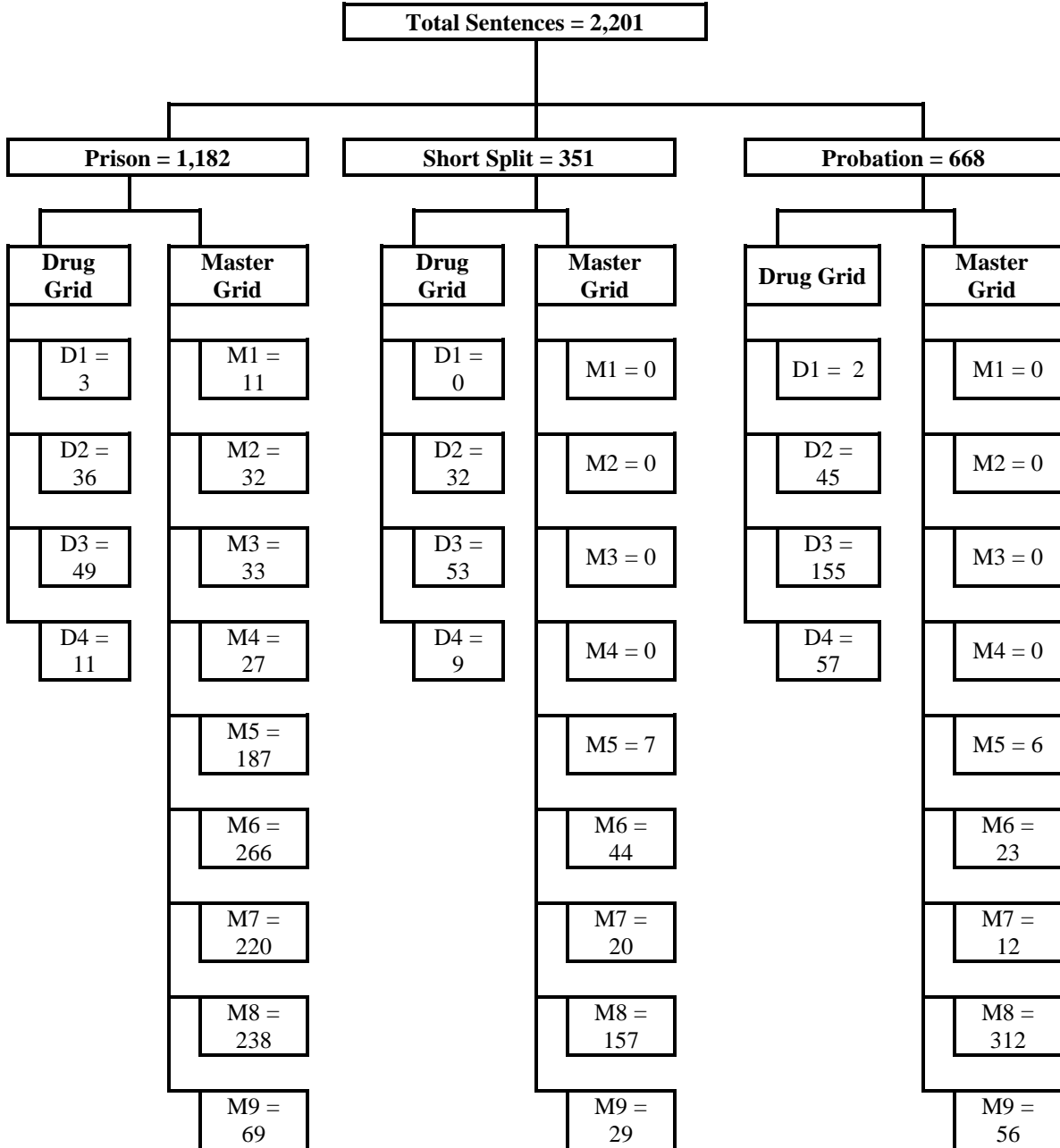
Under the Guidelines a prison sentence is a sentencing option available in every box of both the Master and Drug Grids. Compliant probation and short split sentences are only available in 24 of the 65 boxes on the Master and Drug Grids.¹⁷ These types of sentences are typically reserved for less severe offenses or offenders with limited criminal histories. In addition, some offenses are subject to mandatory minimum sentencing provisions, which require a mandatory prison term.

2. Offense Severity Group

Figure 5 shows a count-level distribution of sentence types imposed in 2016 for each OSG on the Master and Drug Grids. Prison is the most frequent sentence for every OSG except for M8 on the Master Grid and D2, D3, and D4 on the Drug Grid.

¹⁷ See page Chapter 4, Section III for a detailed explanation of the Guidelines structure.

Figure 5: Counts Sentenced by Offense Severity Group (2016)



The largest number of felony counts sentenced fell in M8, representing 40% of all felony non-drug sentences, a very slight decline from the 41% in 2015. The offenses most frequently sentenced in this offense severity level include carrying a pistol without a license (CPWL) and attempted robbery. Similarly, D3 represented the largest number of felony drug counts sentenced in 2016, accounting for 57% of felony drug sentences, a slight increase over the 53% D3 in 2015. Offenses in M8 and D3 represented 43.3% of all felony counts sentenced in 2016, approximately the same percentage observed for these two OSGs in 2015.

Table 3 presents the average CH score by sentence type and OSG for felony counts sentenced in 2016. The table also highlights OSGs where no probation and short split sentences were imposed.

Table 3: Average CH Score and Sentence Length by Offense Severity Group (2016)

N = 2,201

Count Level Analysis						
Sentence Type	Prison		Short Split		Probation	
OSG	% of Counts	Average of CH Score	% of Counts	Average of CH Score	% of Counts	Average of CH Score
M1 (N=11)	100.0%	4.3	0.0%		0.0%	
M2 (N=32)	100.0%	2.2	0.0%		0.0%	
M3 (N=33)	100.0%	1.5	0.0%		0.0%	
M4 (N=27)	100.0%	1.6	0.0%		0.0%	
M5 (N=200)	93.5%	1.7	3.5%	1.4	3.0%	0.2
M6 (N=333)	79.9%	1.9	13.2%	0.3	6.9%	0.4
M7 (N=252)	87.3%	2.6	7.9%	0.8	4.8%	0.2
M8 (N=707)	33.7%	2.7	22.2%	1.0	44.1%	0.5
M9 (N=154)	44.8%	3.1	18.8%	2.6	36.4%	1.0
D1 (N=5)	60.0%	2.0	0.0%		40.0%	0.3
D2 (N=113)	31.9%	3.8	28.3%	1.5	39.8%	1.0
D3 (N=257)	19.1%	3.8	20.6%	2.8	60.3%	1.2
D4 (N=77)	14.3%	2.6	11.7%	3.1	74.0%	0.9

On the Master Grid in descending order of severity, M5 is the first OGS in which a non-prison sentence was imposed. M8 is the first OSG in which prison represents less than half of the sentences imposed. On the Drug Grid, non-prison sentences represent the dominant sentence type imposed for all severity levels except for the very few counts sentenced in D1.¹⁸

Table 4 provides the percentage of felony cases sentenced in each OSG from 2010 through 2016. The proportion of M8 offenses has remained fairly stable, from 32% to 35%, for the past three years, representing 32.6% of all offenses in 2016. The percentage of cases sentenced in OSG M6 and M7 increased in 2015 and 2016, although the most significant percentage increase in these

¹⁸ Only three D1 counts were sentenced in 2016.

two OSGs is found between 2012 and 2013. The increase in these two OSGs is primarily as a result of an increase in the number of sentences for robbery and burglary II. Master Group One felony offenses reached its lowest percentage since 2010, accounting for only 0.4% of all cases sentenced in 2016. Master Group Nine offenses also experienced a 3.4% decrease in offenses sentenced in 2016. The decline is the result of fewer sentences for Bail Reform Act (BRA) violations, escape, and 2nd degree felony fraud.

Table 4: Felony Sentences Imposed by Offense Severity Group, Case Level (2010-2016)

Sentence Year	M1	M2	M3	M4	M5	M6	M7	M8	M9	D1	D2	D3	D4
2010 N=2,149	0.7%	0.9%	1.0%	0.4%	3.1%	6.0%	1.4%	11.3%	9.0%	0.7%	27.3%	38.2%	0.0%
2011 N=1,876	1.4%	1.4%	1.6%	0.6%	4.0%	6.0%	2.3%	16.0%	6.8%	0.7%	23.8%	34.2%	1.1%
2012 N=1,771	1.4%	1.5%	1.8%	0.6%	5.0%	8.2%	3.3%	22.2%	8.8%	0.3%	19.1%	24.5%	3.5%
2013 N=1,290	1.4%	3.3%	0.6%	1.4%	4.3%	21.6%	8.5%	17.3%	10.1%	0.6%	12.6%	17.2%	1.2%
2014 N=1,919	1.2%	1.8%	2.2%	1.7%	5.9%	10.9%	9.1%	35.1%	11.2%	0.4%	6.9%	10.7%	2.9%
2015 N=1,476	0.7%	2.5%	2.2%	2.0%	6.6%	14.4%	10.1%	33.1%	10.4%	0.1%	5.3%	10.1%	2.5%
2016 N=1,683	0.4%	1.4%	1.7%	1.2%	5.9%	15.2%	11.4%	32.6%	7.0%	0.1%	5.0%	13.7%	4.4%

D3 drug offense sentences experienced a steady decline from 2010 through 2015, but saw a 3.6% increase in 2016 (Table 4). The primary offense responsible for this increase was attempted distribution (Dist.) or attempted possession with intent to distribute (PWID) involving cocaine or heroin. Offense Severity Level D4 also indicates a notable increase in sentences from 2.5% in 2015 to 4.4% in 2016, primarily due to attempted possession of liquid PCP, which became a felony and was added to the Drug Grid in 2011.

3. Classification of Offense Types

Listed below are the Commission's offense categories and the most frequent offenses within each category:

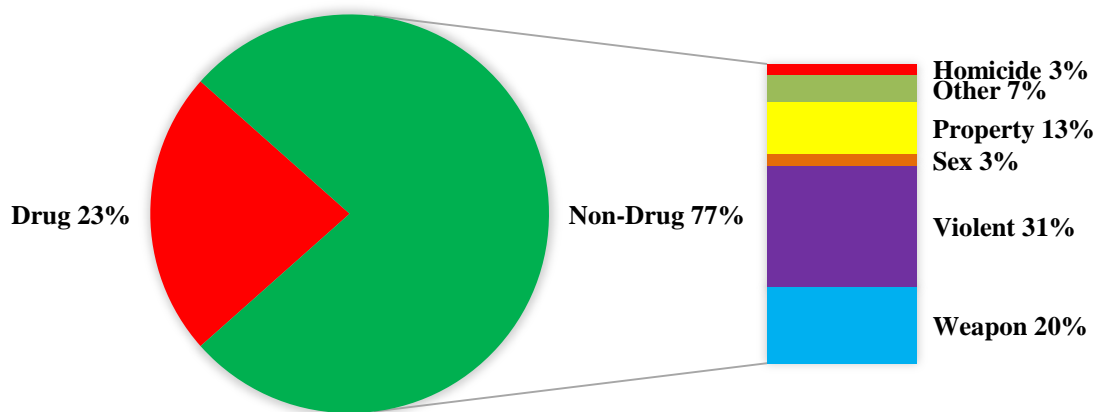
- Drug offenses:
 - Drug offenses while armed;
 - Dist. or PWID of a controlled substance; and
 - Attempted Dist. or attempted PWID of a controlled substance.
- Non-Drug offenses:
 - Homicide: first degree murder, felony murder, second degree murder, and voluntary and involuntary manslaughter;
 - Violent offenses: armed and unarmed robbery, assault with a deadly weapon, aggravated assault, carjacking, and kidnapping;
 - Sex offenses: all degrees of sex abuse, child sex abuse, and human trafficking offenses;

- Property offenses: arson, first degree burglary, second degree burglary, first degree theft, felony receiving stolen property, unauthorized use of a vehicle, fraud, and forgery;
- Weapon offenses: 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 (“PFDCV”);¹⁹ and
- Other Offenses: prison breach, fleeing law enforcement, obstruction of justice, and BRA violations.²⁰

Overall, felony Non-Drug offenses represented approximately 77% of cases sentenced in 2016. Figure 6 presents the distribution of Non-Drug offense types at the case level in 2016. The Violent and Weapon offense categories account for 51% of all non-drug offenses sentenced at the case level. The Violent offense category was the largest offense category (31% of all cases sentenced) a five percentage point increase from 2015. Within the Violent offense category, robbery was the most frequent offense sentenced (39.7% of cases), followed by assault with a deadly weapon (ADW) (27% of cases). Robbery was also the most frequent offense in this category in 2015 (32.8% of the cases).²¹

Figure 6: Offense Categories by Case Level (2016)

N=1,683



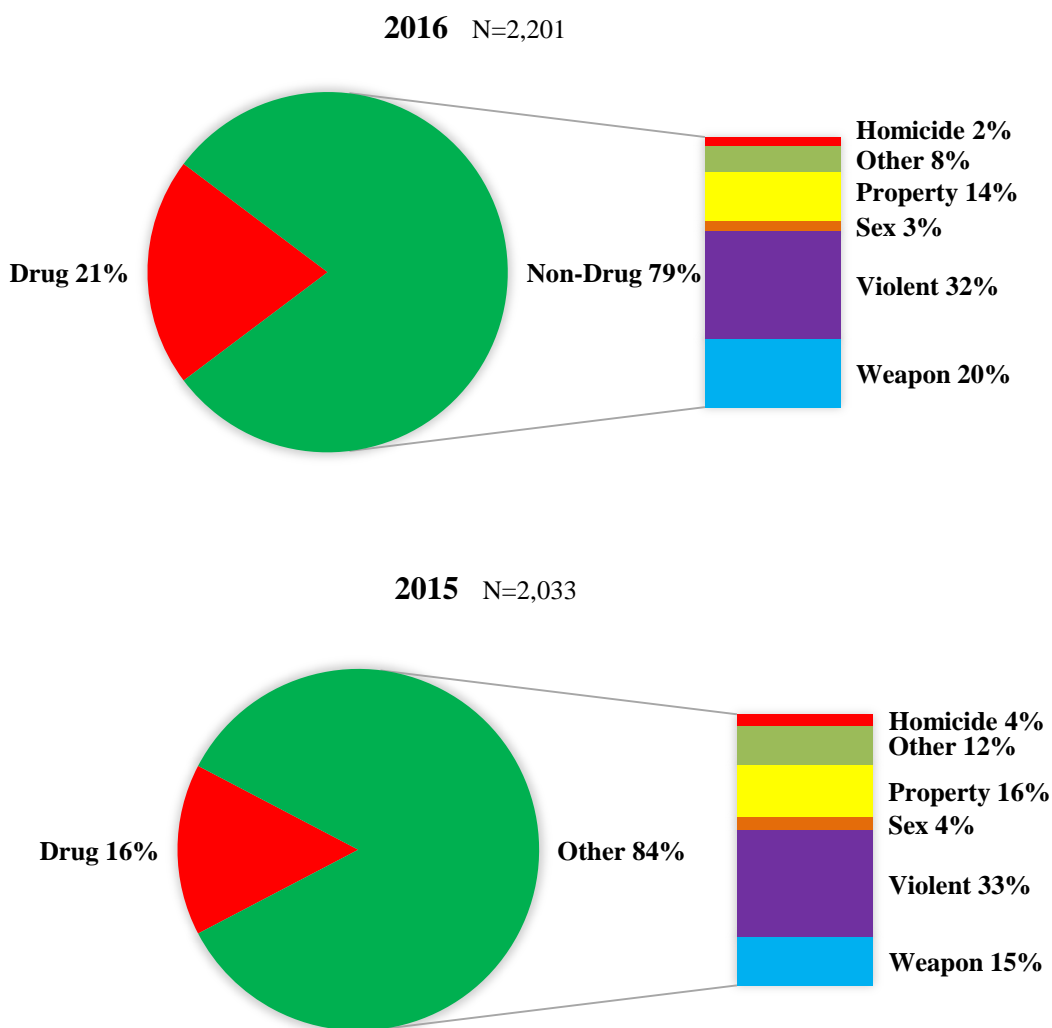
¹⁹ A PFDCV conviction has a 60-month mandatory minimum prison sentence. Because the Guidelines take mandatory minimums into account, sentences imposed for PFDCV increase the compliance rate as well as the percent sentenced to prison for Weapon offenses. Among all sentences imposed by count for Weapon offenses, 15% were for PFDCV.

²⁰ A BRA conviction is the result of an offender failing to return to court as required. D.C. Code § 23-1327(a) (2013).

²¹ It is important to note that the robbery subcategory includes all forms of robbery, from armed robbery to unarmed attempted robbery. Although all forms of robbery are included within the Violent offense category, one of the most common, unarmed attempted robbery, is ranked as an OSG M8 offense and carries a maximum statutory sentence of three years in prison.

Felony non-drug offenses represented approximately 79% of all counts sentenced in 2016, a decline of five percentage points from the 84% in 2015 (Figure 7). Drug counts increased five percentage points from 16% in 2015 to 21% in 2016, contributing to the decrease in Non-Drug offenses sentenced. Figure 7 compares the percentages of the Non-Drug counts sentenced in 2016 and 2015. The percentage of Violent offense counts decreased slightly from 33% in 2015 to 32% in 2016, along with slight decreases in the Sex, Property, Homicide, and Other offense categories. Weapon offenses, however, increased by 5 percentage points from 15% in 2015 to 20% in 2016.

Figure 7: Offense Categories at the Count Level, (2016 and 2015 Comparison)



The percentage of probation, short split, and prison sentences imposed at the case level for each offense type in 2016 is presented in Figure 8. The increase in number of probation sentences represented the greatest change from 2015. The percentage of probation sentences increased in every offense category, with the exception of Homicide. The greatest increase in the proportion of offenders sentenced to probation was for Weapon offenses (20.3%), Other offenses (17.9%),

and Drug offenses (14.8%). There was a minimal increase in the percentage of probation sentences imposed for Violent offenses (2.3%) and Sex offenses (3.5%). The proportion of offenders receiving split sentences was very similar to 2015, with only minimal changes for most offense categories in 2016.

The proportion of prison sentences decreased across all offense categories in 2016, with largest declines in Drugs, Other, and Weapon offense categories, which was offset by the increase in probation sentences for these offenses. The Other offense category experienced almost a 20% decline in prison sentences from 55.6% (2015) to 36.1% (2016). Drug offenses showed a 13.5% decline in prison sentences, falling from 32.8% in 2015 to only 19.3% in 2016. Prison sentences for Violent offenses remained fairly stable with only a two percent decrease from 2015.

Figure 8: Case Level Offense Category by Sentence Type (2016)

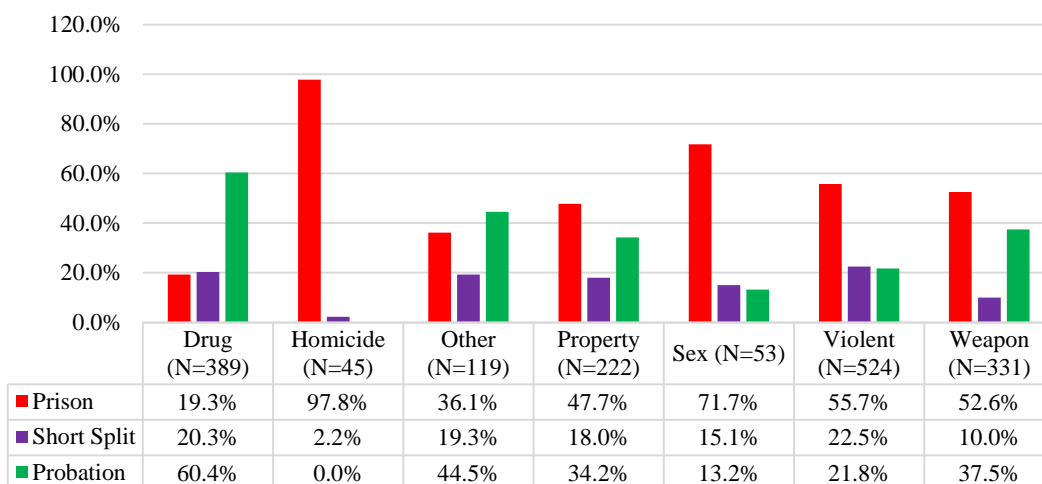
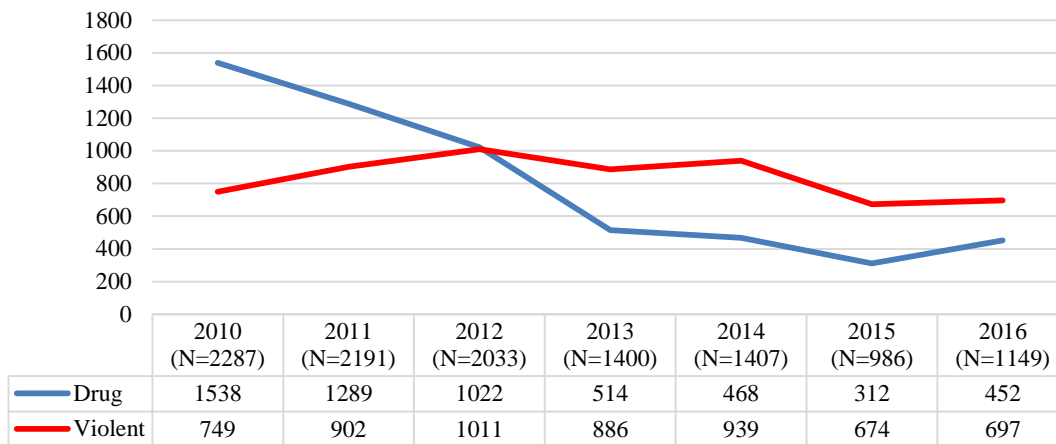


Figure 9 highlights Drug and Violent offense categories, which have experienced significant fluctuation in the number of counts sentenced between 2010 and 2016. Sentences in the Drug offense category decreased by 79.7% from 2010 and 2015, dropping from 1,538 counts in 2010 to 312 counts in 2015. However, in 2016, the Drug offense category experienced a 44.9% increase in the number of counts sentenced between 2015 (312) and 2016 (452). This is the first increase in the number counts sentenced for Drug offenses in seven years.

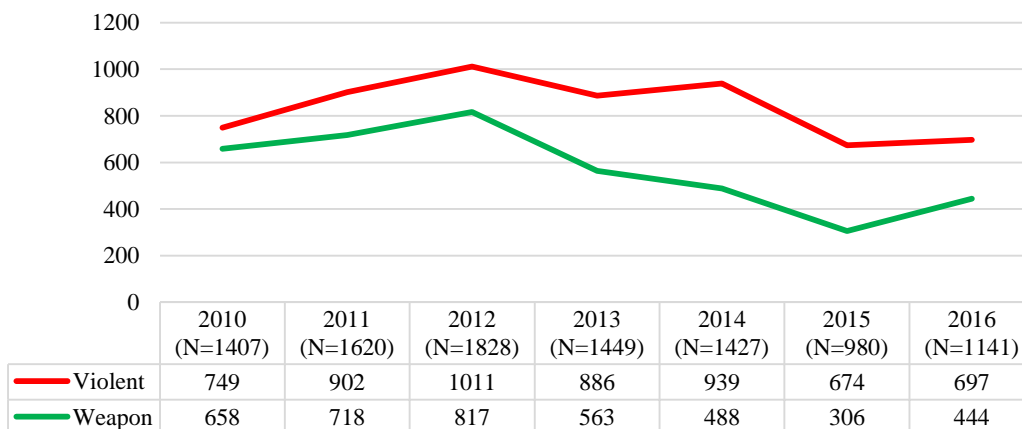
However, unlike Drug offenses, the number of Violent offenses has fluctuated from year to year, remaining relatively stable between 2015 and 2016.

Figure 9: Sentenced Drug and Violent Offense Counts (2010-2016)



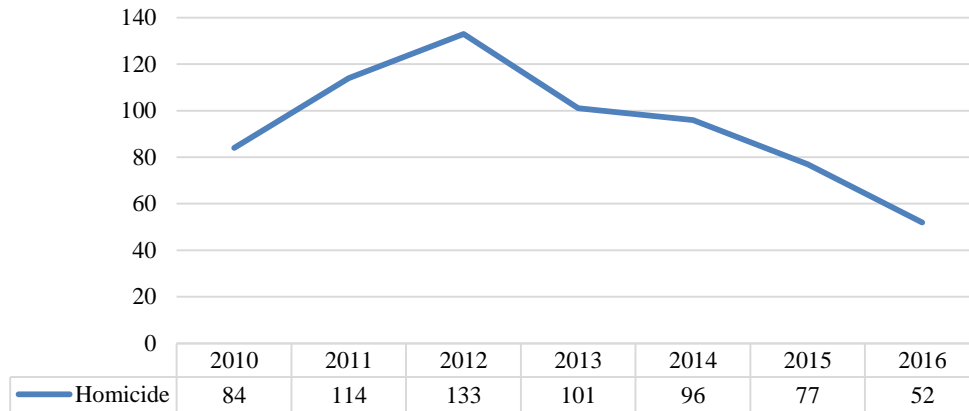
When Weapon and Violent counts are examined, the trend between the two offense categories is very similar but not identical (Figure 10). Between 2010 and 2012 there is a gradual increase in the number of counts sentenced in both offense categories, then a gradual decline in Weapon offenses through 2015 and a notable increase in 2016, when 444 counts were sentenced compared to 306 counts in 2015. However, Violent offenses sentenced do not demonstrate a consistent decline as they show some fluctuation during this same time period, including a slight increase in 2016 (23 counts), which followed a significant decrease (265 counts) from 2014 to 2015.

Figure 10: Sentenced Weapon and Violent Offense Counts (2010-2016)



Similar to Violent and Weapon offenses sentenced between 2010 and 2016, the number of Homicide counts has demonstrated a decline in recent years (Figure 11). Homicide counts sentenced have fallen from 133 in 2012 to only 52 Homicide counts sentenced in 2016, representing the lowest number of counts in the 2010 to 2016 time period.

Figure 11: Sentenced Homicide Counts (2010-2016)

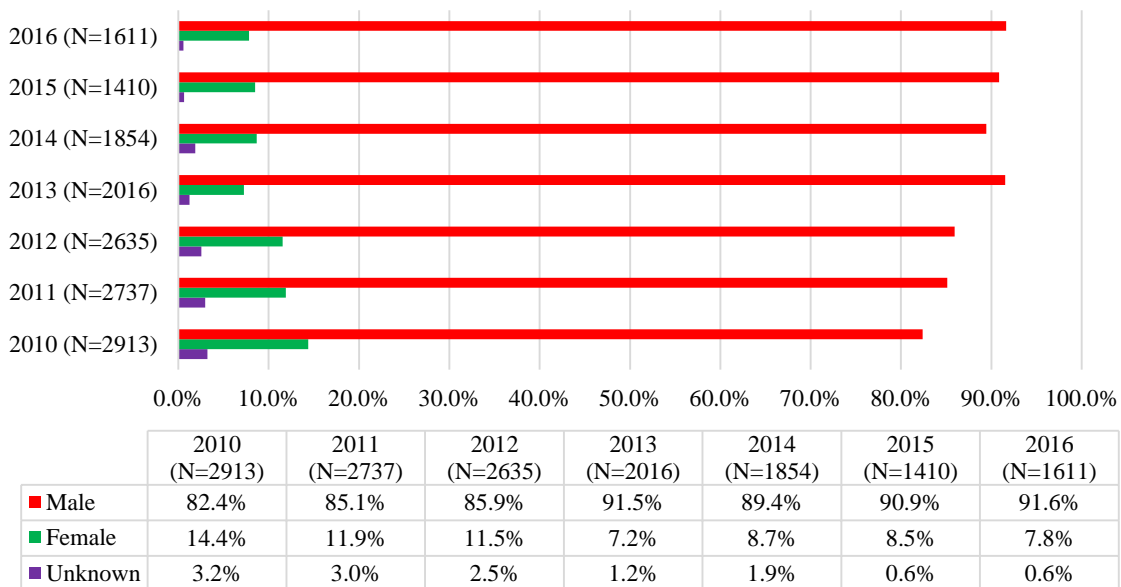


B. 2016 Felony Sentencing Demographics: Gender, Race, and Age of Offenders

1. Gender by Offense Categories

An offender's gender was recorded for 1,601 of the 1,611 offenders sentenced in 2016 (Figure 12).²² As in previous years, the number of male offenders (91.6%) sentenced greatly exceeded the number of female offenders (7.8%). Females have accounted for less than 10% of the sentences imposed since 2013.

Figure 12: Felony Offenders by Gender (2010-2016)

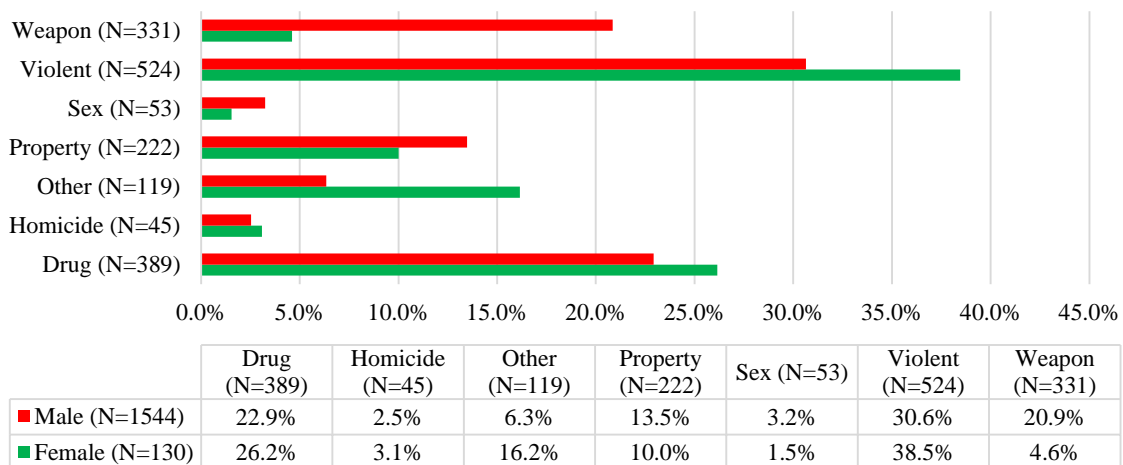


²² For this report the offender's gender was calculated at the case level. Based on the data available, it was determined that this was the most accurate and reliable method of measuring offender gender.

Figure 13 shows the percentage distribution of sentences imposed by offenses category for the total number of sentences imposed for each gender. Although there were many more males than females sentenced in 2016, both males (30.6% of 1,544) and females (38.5% of 130) were sentenced more frequently for Violent offenses than any other offense category (Figure 13). Consequently, the Violent offense category has surpassed all other offense categories for females, including the Other offense category, which has historically been the highest female offense category. The only other two offense categories in which proportion of sentences for females surpassed proportion of sentences for males were Drug and Homicide offenses (Figure 13). However the percentage point difference between the genders is much closer for than violent offenses for these two offense categories, with a 3.3 percentage point difference for Drug offenses (26.2% for females and 22.9% for males) and less than a one percentage point difference for Homicide (3.1% for females and 2.5% for males).

The Other offense category accounts for 16.2% of all sentences imposed for females, but reflects a 46.5% decline from 30.3% in 2015 to 16.2% in 2016. This decline can primarily be attributed to fewer sentences for BRA and Escape/Prison Breach.

Figure 13: Gender by Offense Type, Case Level (2016)



For male offenders, Violent offenses remains the largest offense category (30.6% of 1,544 males sentenced), followed by Drug offenses (22.9%) and Weapon offenses (20.9%). Males sentenced for Weapon offenses show a slight decline from 21.4% in 2015.

Overall, in 2016 the average CH score for males of 1.7 was higher than the average CH score for females, 1.0 (Table 5). Females have consistently had an average CH score less than 1.3 since 2010. The average male CH score was 2.1 in 2010, slowly declining to an average CH score of 1.7 in 2016.

Table 5: Average Criminal History Score by Gender (2010-2016)

Sentence Year	Female	Male
2010	1.3	2.1
2011	1.3	2.0
2012	1.1	1.9
2013	0.8	1.8
2014	0.8	1.7
2015	1.0	1.9
2016	1.0	1.7

2. Race by Offense Categories

Race was reported for 1,567 of the 1,611 offenders sentenced in 2016. Similar to previous years, approximately 95% of offenders were Black (1,482 out of 1,567). The remaining offender race categories included American Indian, Asian, Hispanic, White, and Other offenders.²³ Very little statistically significant analysis can be conducted across races given that the number of White, Hispanic, Asian, and American Indian offenders is not large enough to be statistically significant for comparison purposes.

3. Age by Offense Category²⁴

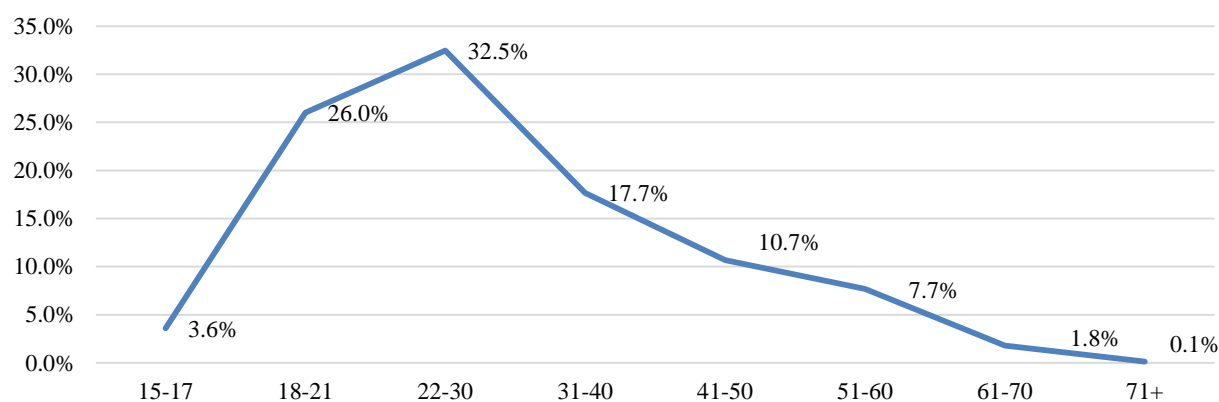
Age was calculated for offenders in 1,669 of the 1,683 cases sentenced in 2016.²⁵ Offenders between the ages of 18 and 30 account for 58.5% of all offenders sentenced (Figure 14). The 22-30 age group represents the single highest age group (32.5% of all offenders sentenced), followed by a steady decline in percentages as age increases.

²³ The Other category for race includes all individuals not identified or reported as American Indian, Asian, Black, Hispanic, or White.

²⁴ The age of each offender refers to his or her age at the time the offense was committed.

²⁵ For this report the offender's age was calculated at the case level. Based on the data available, it was determined that this was the most accurate and reliable method of measuring offender age.

Figure 14: Sentences Imposed by Age Group, Case Level (2016)



The largest percentage change by age group between 2010 and 2016 was in the 18-21 age group, showing a 9.5% increase, followed by a 6.3% increase in the 22-30 age group. The percentage of offenders aged 15-17 has also grown, steadily increasing from 1.2% in 2010 to 3.6% in 2016 (Table 6).²⁶ Offenders 30 years of age and younger represent just over 62% of felony offenders sentenced in 2016. By contrast, offenders over the age of 60 represent less than 2% of the sentences imposed this past year, which is consistent with the percentage of offenders sentenced in this age group since 2013.

Table 6: Sentences by Age Group, Case Level (2010-2016)

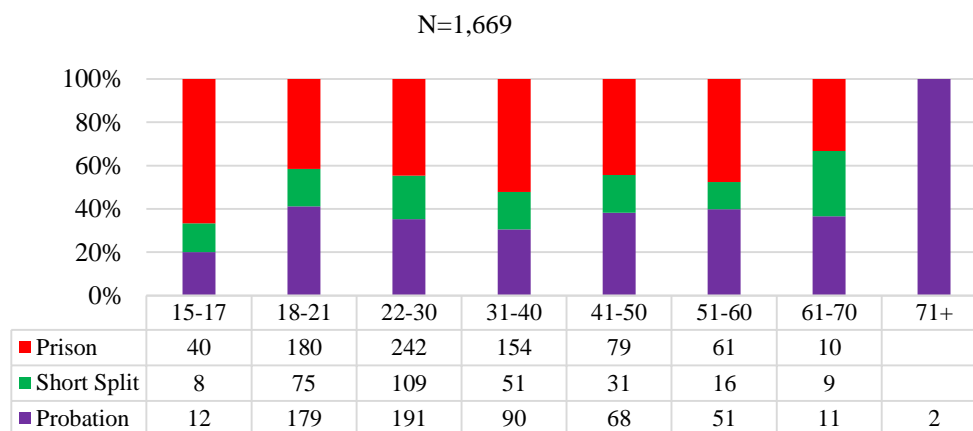
Age Group	2010 (N=2,089)	2011 (N=1,823)	2012 (N=1,717)	2013 (N=1,257)	2014 (N=1,894)	2015 (N=1,476)	2016 (N=1,669)
15-17	1.2%	1.5%	1.3%	2.9%	2.6%	2.3%	3.6%
18-21	16.5%	19.8%	23.4%	29.1%	31.8%	27.8%	26.0%
22-30	26.2%	26.8%	28.4%	29.5%	28.8%	32.7%	32.5%
31-40	19.2%	20.3%	19.7%	17.1%	17.4%	18.1%	17.7%
41-50	23.8%	20.5%	17.4%	12.9%	11.0%	10.3%	10.7%
51-60	11.2%	10.0%	8.6%	6.8%	7.1%	7.7%	7.7%
61-70	1.8%	1.2%	1.3%	1.6%	1.2%	0.9%	1.8%
71+	0.0%	0.0%	0.0%	0.1%	0.1%	0.2%	0.1%
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Without controlling for offense type, over 40% of all offenders under the age of 60 were sentenced to prison, while offenders above the age of 60 were more likely to receive either a short split or probation sentence (Figure 15). In 2016, over 55% of offenders age 18-21 received either a short split or probation sentence.

²⁶ In the District, a 16 and 17 year old who commits certain enumerated 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 in the Superior Court Criminal Division. See D.C. Code § 16-2301(3).

Offenders sentenced in Homicide, Violent, and Weapon offense categories tended to be younger offenders, with an average age of 25.4 years. Whereas, offenders sentenced in Drug, Other, and Sex offense categories were slightly older, with an average age of 30.8 years.

Figure 15: Age Group by Sentence Type, Case Level (2016)

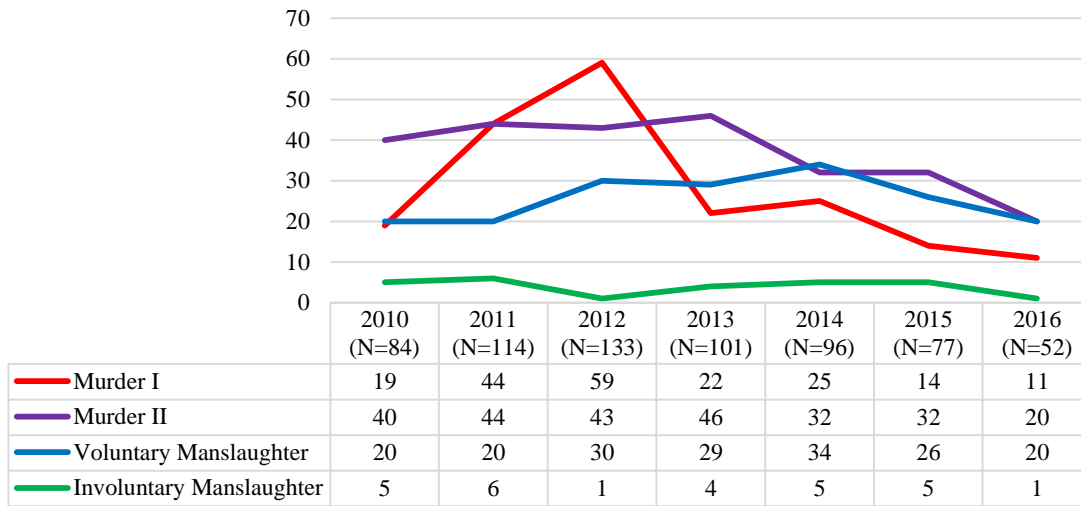


C. Homicide Analysis

There were 52 Homicide counts sentenced in 2016, showing a 32.5% decrease from 2015.²⁷ The number of Homicide counts sentenced in 2016 represents the lowest number of homicide sentences imposed in the 2010-2016 time period. The most frequent types of Homicide sentenced were second-degree murder (38.5%) and voluntary manslaughter (38.5%).

²⁷ Negligent homicide is included in the Other Offense category; it is not included in the Homicide category.

Figure 16: Homicide Sentences by Year, Count Level (2010-2016)



D. Overview of Top Five Offense Categories and Subcategories²⁸

The Commission classifies all felony offenses into one of seven offense categories.²⁹ These seven offense types are further broken down into 13 subcategories.³⁰ This section provides an overview of sentencing trends for the top five offense categories and subcategories at the count level. The top five offense categories and subcategories are determined by number of felony counts sentenced within each offense category and subcategory. Figure 17 shows the distribution of the 2016 top five offenses categories over the past seven years.

²⁸ See Appendix C for a list of all offenses contained within each subcategory.

²⁹ The seven offense categories are: Drug, Homicide, Other Offenses, Property, Sex, Violent, and Weapon.

³⁰ The 13 offense subcategories are: Assault, Attempted Drug, Burglary, Kidnapping, Homicide, Other-Non-Property, Other-Property, PWID + Dist., Robbery, Sex, Theft, Weapon, and While Armed Drug Offenses.

Figure 17: Top Five Offense Categories, Count Level (2010-2016)

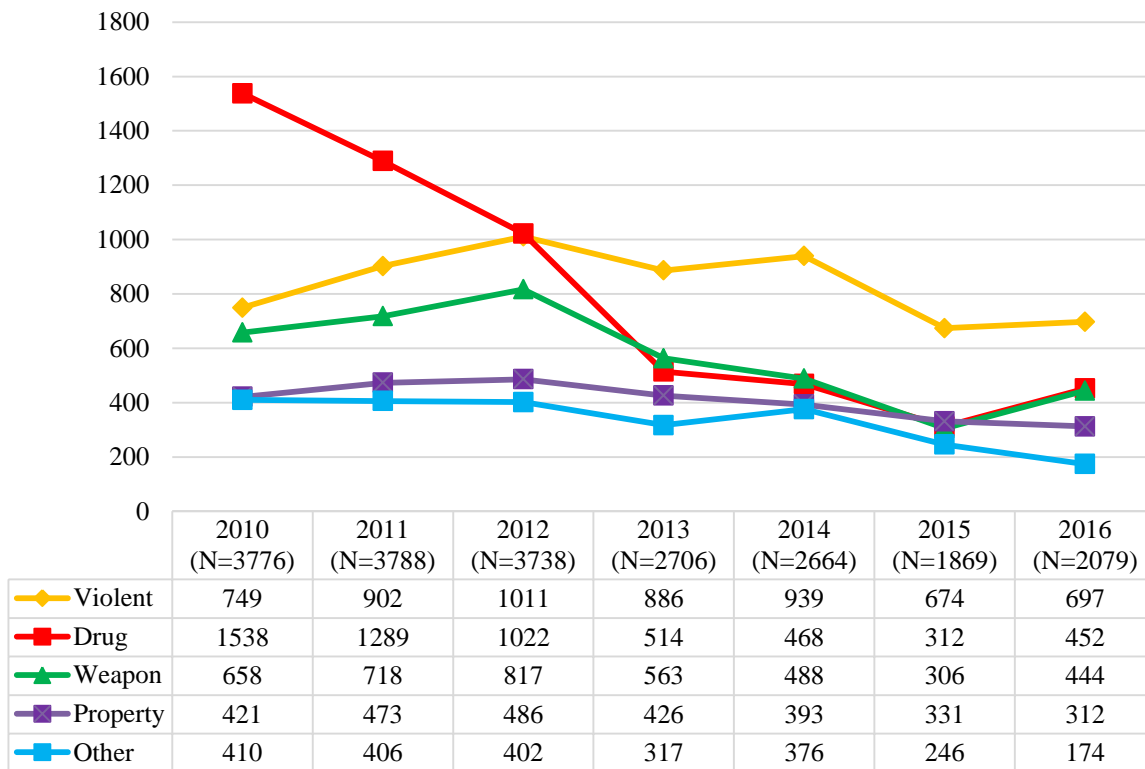


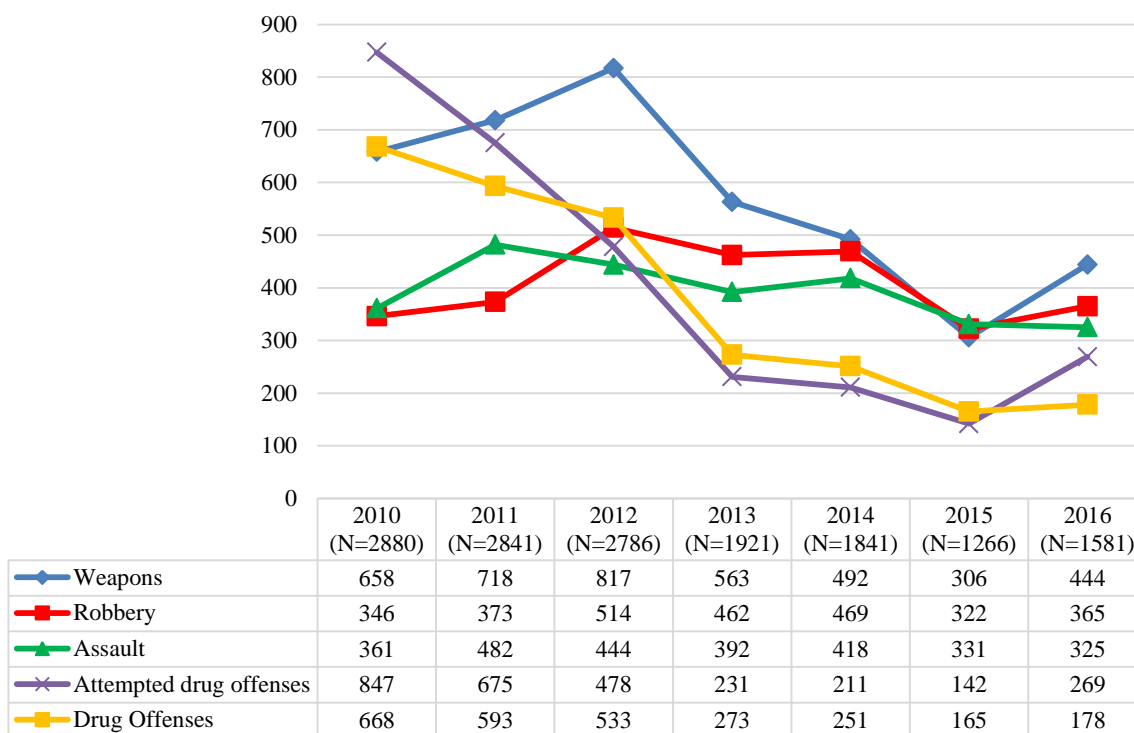
Figure 17 shows that sentences in the Violent offense category peaked in 2012, but demonstrated a gradual decline from 2013 through 2015, before increasing by 3.4 % in 2016. Weapon offenses also reached a high in 2012, while showing a decline through 2015. However, there is a 45% increase in sentences imposed for Weapon offenses between 2015 and 2016. There have been decreases in the number of sentences imposed in the Other and Property offense categories over the past three years, with a 29% decrease in the Other offense category between 2015 and 2016.

The Drug offense category has demonstrated the most significant decline in sentences over the 2010-2016 time period, with a 79.7 % decrease between 2010 and 2015 (Figure 17). However, following the trend seen in several of the other offense categories, Drug sentences increased by 44.8% in 2016.

As mentioned previously, each of the seven offense categories are divided into 13 subcategories to allow for more in-depth analysis of specific offenses that significantly contribute to the larger offense categories. Figure 18 presents sentencing trends for the top five subcategory offenses, which include: Weapons, Robbery, Assault, Attempted Drug and Drug offenses. These five offense subcategories accounted for 76.8% of all felony offenses sentenced in 2016. In addition,

for the first time since 2010, the Other offense subcategory was not among the top five subcategories.³¹

Figure 18: Top Five Offense Sub-Categories, Count Level (2010 – 2016)



The largest increase in sentences is found in the Weapons subcategory,³² which has demonstrated a steady decline from 2010 through 2015, but increased, by 45% in 2016. Sentences for Robbery declined in previous years, but show an increase of approximately 13% in 2016.

As would be expected, sentences for both Attempted Drug and Drug subcategories followed the declining trend seen in the Drug offense category between 2010 and 2015.³³ However there is an increase in sentences for both categories between 2015 and 2016. As Figure 18 indicates, the increase is much higher for Attempted Drug offenses (89.4%) than for Drug Offenses (7.9%). The Assault offense subcategory is the only subcategory that shows a decrease (1.8%) in sentences imposed in 2016.³⁴

³¹ The Other Offense category includes a variety of offenses including: Bail Reform Act, fraud, obstructing justice, prison breach, fleeing a law enforcement officer, etc.

³² The Weapon Offense category includes: carrying a dangerous weapon, carrying a pistol without a license, unlawful possession of a firearm (felon in possession), distribution of firearms/destructive device/ammunition, etc.

³³ The Attempted Drug Offenses category includes attempted Dist. or attempted PWID (except Schedule I or II narcotic or abusive drugs) and attempted possession of liquid PCP.

³⁴ The Assault Offenses category includes: assault with a dangerous weapon, assault with intent to kill, assault on a police officer, mayhem, etc.

III. Compliance with the D.C. Voluntary Sentencing Guidelines

The Commission monitors judicial compliance with the Sentencing Guidelines as part of its statutory mandate. This allows the Commission to assess how well the Sentencing Guidelines are achieving the goals of promoting fair and consistent sentencing and highlights sentencing patterns that may suggest a need to modify the Guidelines.

Judicial compliance with the Sentencing Guidelines, as used in this section, means that the sentence satisfied both the type and length of sentence recommended by the applicable Guidelines grid box, was a compliant departure where the judge relied on one of the aggravating or mitigating factors identified in the Guidelines, was imposed to run concurrently with an equal or longer compliant sentence, was compliant due to a sentencing enhancement, or was imposed pursuant to Super Court Criminal Procedure Rule 11(c)(1)(C) (Rule 11(c)(1)(C)). Judicial compliance with the Sentencing Guidelines remains very high, near or above 90% since the implementation of the Guidelines. In 2016, 97.5% of all initial felony counts sentenced were compliant with the Guidelines.

A. How the Commission Defines Compliance with the Sentencing Guidelines

The Commission determines compliance with the Sentencing Guidelines by examining whether the actual sentence imposed by the Court falls within the sentencing options and sentencing range recommended by the Guidelines, which are based on the OSG and the offender's CH score. The Guidelines place every non-drug felony offense into one of nine OSGs (M1 to M9) based on its predetermined severity level (M1 being the most serious offenses and M9 being the least serious), and place every felony drug offense into one of four OSGs (D1 to D4), from the most serious to the least serious.

Prior to sentencing, a CSOSA presentence report writer researches an offender's complete criminal history, applies a series of Guidelines scoring rules, and calculates each offender's numerical CH score.³⁵ The CH scoring rules account for the type, number, and severity of the offender's prior convictions, as well as the length of time between the end of the offender's prior sentences and the commission of the instant offense. Once the CH score is calculated, the Guidelines place the CH score into one of five CH score categories, A through E, with A representing the lowest CH score category and E representing the highest.

The intersection of an offender's OSG on the vertical axis and CH score category on the horizontal axis on either the Master or the Drug Grid identifies the grid box containing the offender's recommended sentence type and sentence range.³⁶ To be considered a Guidelines

³⁵ On rare occasions, such as when the court sentences the offender immediately after a plea or verdict, CSOSA may not be requested to complete a criminal history score for an offender.

³⁶ See Appendices A and B for the Master Grid and Drug Grid.

compliant in-the-box sentence, the sentence imposed for each felony count must be compliant in both length (durational compliance) and sentence type (dispositional compliance). Durational compliance means the total sentence falls within the specific Guidelines range for the defendant's grid box. Dispositional compliance means the type of sentence imposed is available in the defendant's grid box.

Dispositional compliance is based on the Guidelines sentencing options available in each grid box. There are 45 boxes on the Master Grid and 20 boxes on the Drug Grid. Each grid box has one, two, or three sentencing options available:

- **Prison and Compliant Long Split Sentences:** Available in all boxes
- **Short Split Sentences:** Available in colored (green and yellow)/shaded boxes (light and dark)
- **Probation Sentences:** Available in yellow/light shaded boxes

Sentences are defined as:

- **Prison Sentence:** The court sentences the offender to a term in prison within the grid box range. None of the time imposed is suspended. The prison term is followed by a period of Supervised Release;
- **Compliant Long Split Sentence:** The court sentences the offender to a term in prison within the grid box range. The court suspends part of the sentence; however the time actually served (not suspended) is still equal to or above the bottom of the appropriate Guidelines range. The remainder of the sentence is suspended, with a period of probation to follow release from prison;
- **Short Split Sentence:** The court sentences the offender to a term in prison within the grid box range. The court suspends part of the sentence, however the time actually served (not suspended) is at least one day and not more than six months. The remainder of the sentence is suspended, with a period of probation to follow release from prison; or
- **Probation Sentence:** The court sentences the offender to a term in prison within the grid box range, suspends the entire sentence, and places the offender on a period of probation.

If the type of a sentence is not an available option, and/or if the duration of the sentence is not within the range provided, as determined by the grid box applicable to the offender, that sentence is deemed to be outside-the-box sentence. An outside-the-box sentence can still be compliant with the Guidelines if it falls into one of the other compliant sentence classifications.

B. Guidelines Sentence Classifications

The Commission assigns all sentences to one of the following five categories:

- **Compliant In-the-Box Sentences:** Sentences that fall within the appropriate sentence type (prison, short split, or probation) and grid box range based on the offender's offense of conviction and CH score.
- **Compliant Outside-the-Box Sentences:** Sentences that fall either above or below the original grid box range and sentence type for that offender, but are compliant with the Guidelines due to other factors. Examples include sentences that run concurrently with a compliant greater or equal sentence and sentences based upon a statutory enhancement.³⁷
- **Rule 11(c)(1)(C) Sentences:** Sentences that are based upon a Rule 11(c)(1)(C) guilty plea, where the parties agree upon a sentence at the time the plea is entered and the judge accepts the plea, including the agreed upon sentence.³⁸ Sentences following a Rule 11(c)(1)(C) plea are analyzed as compliant in-the-box sentences.
- **Compliant Departures:** Sentences that do not fall within the appropriate sentence type or grid box range given an offender's offense of conviction and CH score; however, the judge cited an applicable aggravating or mitigating departure principle.³⁹
- **Non-Compliant Departures:** Sentences that do not fall within the appropriate sentence type or grid box range given an offender's offense of conviction and CH score, and the judge does not cite an aggravating or mitigating departure principle. The District's Guidelines are voluntary. Therefore, a judge can impose any legal sentence, whether or not it is compliant with the Guidelines.

The classification of compliance into five distinct categories enables the Commission to examine instances when a judge's sentence falls within the recommended range, falls within the range as

³⁷ Statutory enhancements raise the maximum sentence in the Guidelines range for the applicable box in proportion to the effect of the enhancement on the statutory maximum sentence, but do not affect the bottom of the in-the-box range.

³⁸ Under Rule 11(c)(1)(C) the parties can agree on a guilty plea with a specific sentence or sentence range or cap. If the judge accepts the plea, the judge is also bound by the parties' agreement. All counts sentenced as a result of a Rule 11(c)(1)(C) plea are classified as compliant Rule 11(c)(1)(C) sentences regardless of whether the agreed sentence imposed would have otherwise been compliant with the applicable Guidelines range and/or sentencing options.

³⁹ In order to address atypical cases or offenders, the Guidelines allow judges to depart from the recommended sentencing range and options. Departures are classified as either aggravating or mitigating departures depending on whether they depart higher or lower than the sentence type or prison range called for by the Grid box. There are 11 aggravating departure principles that may be used when the sentence imposed by the judge is more severe than the sentence recommended by the Guidelines and 10 mitigating departure principles that may be applied when the sentence imposed by the judge is less severe than the Guideline recommended sentence. When one of the 21 departure principles is cited by a judge as a reason for departing from the applicable guidelines, the sentence is considered a "compliant departure."

expanded by a statutory enhancement, follows a departure principle, or represents a sentence where the judge chose not to follow the Guidelines for that offense.

C. Data Reporting

The first step in measuring judicial compliance with the Sentencing Guidelines is to identify the appropriate sentencing option and prison range for every felony count sentenced, and then compares that to the sentence imposed by the judge. The Court provides offense and sentencing information to the Commission via the IJIS 12.1 interface. CSOSA enters criminal history information for each offender directly into the GRID System through GSS. The GRID System uses this data to determine compliance with the Sentencing Guidelines, which is reported at the count level.

If, after a multi-step validation process,⁴⁰ a sentence still appears to be non-compliant, a Departure Form is forwarded to the judge to verify the offense, offender, and sentence information in the case. Departure Forms also provide the sentencing judge the opportunity to identify inaccuracies in the data, such as an incorrectly recorded sentence, a modified CH score, a departure principle the judge relied on but did not record, or an explanation of why he or she elected to deviate from the Sentencing Guidelines. In 2016, the Commission contacted the Court and/or sent Departure Forms to judges for all counts that initially appeared non-compliant. Of the 92 Departure Forms sent to judges, the Commission received 74 replies. The 80% response rate represents a significant improvement over previous years.⁴¹ The high response rate improves the Commission's data and partially accounts for a decrease in non-compliant sentences (Figure 19).⁴²

Superior Court judges ordered a presentence report or requested an offender's CH score information in 98% of all felony counts sentenced in 2016. The Commission received complete sentencing data for all cases for which CSOSA calculated the offender's CH score (consisting of a CH score, a conviction charge, and a sentence). Two percent of felony counts sentenced involved cases where the court did not request the offender's CH score or the judge sentenced the offender without a Presentence Report (PSR). Without the benefit of a CH score, compliance could not be calculated in these cases.

Guidelines compliant departure information prior to 2010 was not collected and categorized in the same manner it currently is. Therefore, the compliance analysis contained in this section

⁴⁰ For a more detailed explanation of the process, see Appendix E.

⁴¹ Prior to 2016, the Commission never achieved a Departure Form response rate above 50%. The higher response rate in 2016 can be attributed to sending out Departure Forms closer to the sentencing date and following up on forms with the sentencing judge.

⁴² If a judge does not respond to a Departure Form or Commission follow-up, the sentence is deemed non-compliant.

relies only on data from 2010 through 2016. This allows the Commission to provide an accurate assessment of trends related to compliant departures and overall judicial compliance.

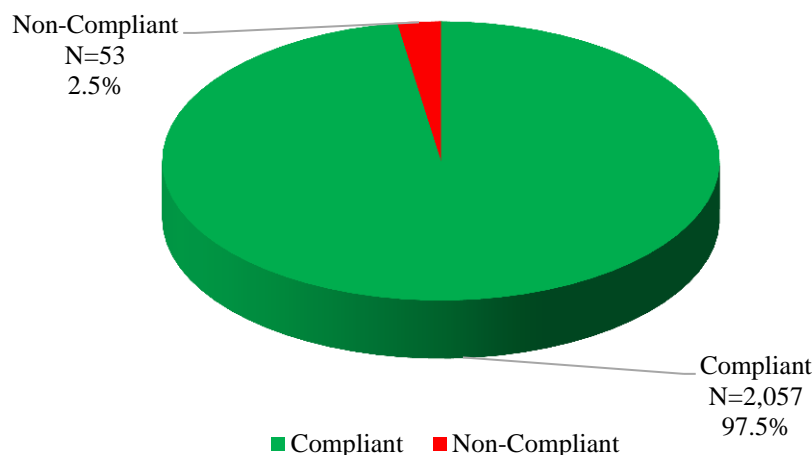
D. Compliance Analysis

1. Overall Compliance

In 2016, Superior Court judges imposed initial sentences for 2,201 counts.⁴³ The Commission calculated Guidelines compliance for 2,110 of the 2,201 counts. The remaining 91 counts occurred in cases where the Guidelines did not apply,⁴⁴ instances when the Court did not request a CH score calculation,⁴⁵ or where invalid data was reported to the Commission.

Figure 19: Overall Judicial Compliance (2016)

N=2,110



As in previous years, the rate of judicial compliance with the Sentencing Guidelines remains greater than 90% (Figure 20). The 97.5% Guidelines compliance rate in 2016 is the highest compliance rate ever observed by the Commission.

⁴³ As discussed on page 19, this is the number of initial counts sentenced; it does not include sentences following revocation of probation or remand from the Court of Appeals.

⁴⁴ The Guidelines do not apply to sentences where defendant's guilt was determined prior June 14, 2004.

⁴⁵ In previous Annual Reports the Commission classified counts sentenced without a CH score as compliant sentences. However, because compliance cannot be calculated without a CH score, the 42 counts sentenced in 2016 without a CH score were removed from this analysis. Counts sentenced without a CH score have also been removed from the historical data used throughout this chapter.

Figure 20: Trends in Judicial Guidelines Compliance (2010-2016)



2. Compliance by Offense Type

Figure 21 shows the percentage of compliant and non-compliant sentences imposed by offense type.

Figure 21: Compliance by Offense Category (2016)

Compliant N=2057, Non-Compliant N=53

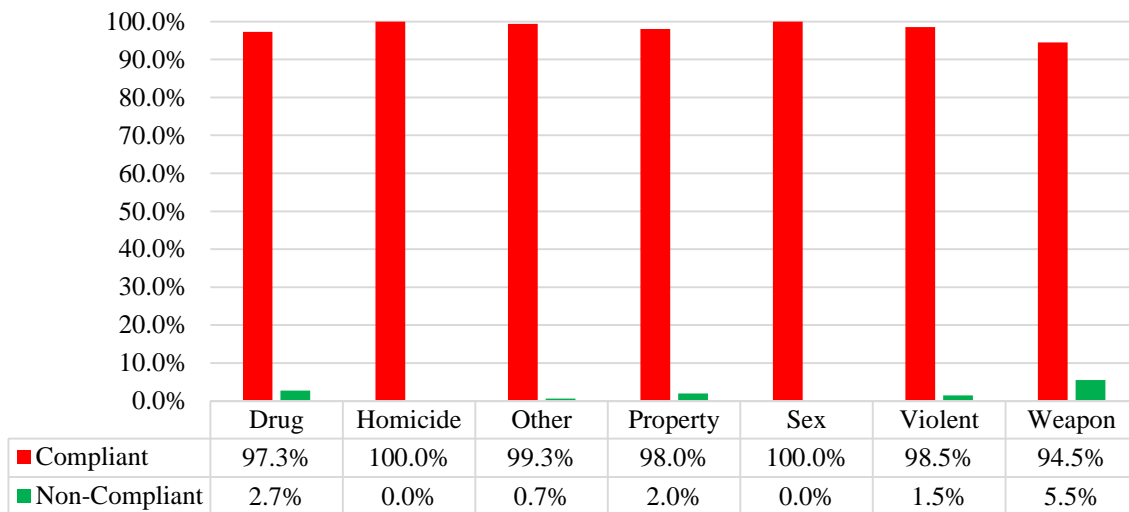
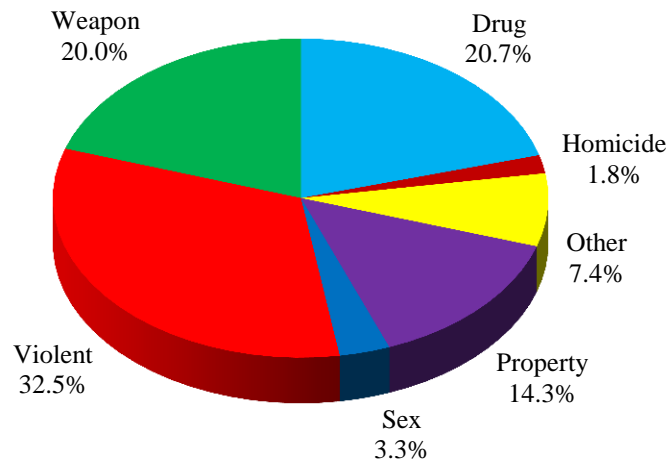
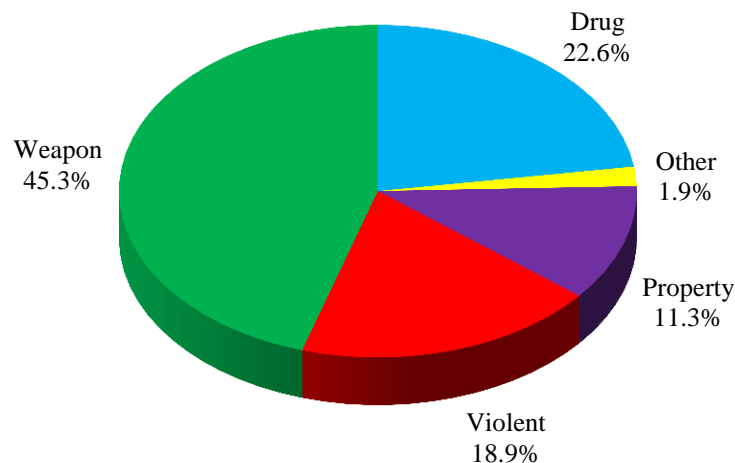


Figure 22: Distribution of Compliant Sentences by Offense Categories (2016)
N=2,057



Given that the overwhelming majority of felony counts sentenced in 2016 received compliant sentences, the distribution of compliant sentences by offense category shown in Figure 22 is nearly identical to the overall offense category percentages shown in Figure 7 (2016). However, unlike the distribution of compliant sentences by offense category, the 53 non-compliant counts sentenced in 2016 (Figure 23) show a different result when analyzed by offense type. Weapon offenses made up substantially more of the non-compliant counts sentenced (45.3% v. 20%). Conversely, Violent offenses constituted a lower percentage of non-compliant counts than total counts (18.9% v. 32.5%).

Figure 23: Distribution of Non-Compliant Sentences by Offense Categories (2016)
N=53



3. Judicial Compliance Subcategories.

As discussed in Section II, judicial compliance with the Guidelines can be further divided into subsections based on the different types of compliant sentences: compliant in-the-box, compliant outside-the-box, compliant departure, Rule 11(c)(1)(C) pleas, and non-compliant sentences.

Figure 24: Compliance Sub-Categories (2016)

N=2,110

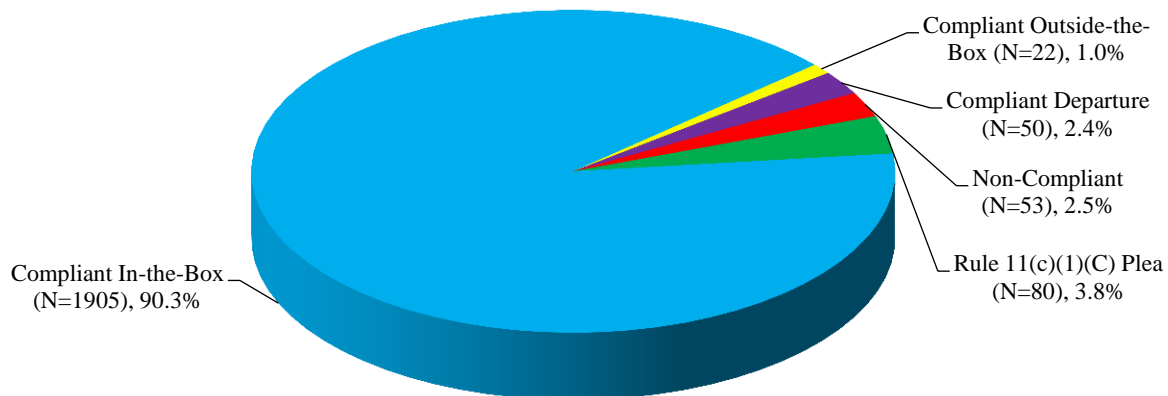


Table 7: Historic Compliance Sub-Categories (2010 - 2016)

Compliance Status	2010 (N=1,900)	2011 (N=1,637)	2012 (N=2,726)	2013 (N=2,348)	2014 (N=2,364)	2015 (N=1,949)	2016 (N=2,110)
11(c)(1)(C) Plea	0.0%	0.1%	0.8%	2.3%	3.6%	1.4%	3.8%
Compliant In-the-Box	85.7%	87.7%	89.4%	91.6%	86.9%	88.0%	90.3%
Compliant Outside-the-Box	0.0%	0.1%	0.2%	0.7%	1.7%	2.3%	1.0%
Compliant Departure	0.1%	1.5%	1.3%	1.6%	4.5%	3.3%	2.4%
Non-Compliant	14.2%	10.6%	8.3%	3.8%	3.2%	5.0%	2.5%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

E. Compliant Departures

Compliant Departures occurred in 2.4% (50 counts) of all felony counts sentenced in 2016, with each assigned a departure factor.⁴⁶ Although these departures constituted a small percentage of all sentences, they offer insight into why judges may choose to impose a sentence outside of the Guidelines grid boxes in particular cases. Judges cited the following aggravating (A) and mitigating (M) factors for departures in 2016:

⁴⁶ Appendix D lists all available Aggravating and Mitigating Departure Factors.

- A11 - Any other substantial and compelling basis, similar to those articulated in the Guidelines, to depart upward (aggravated “catchall” departure);
- M7 - The offender has provided substantial assistance to law enforcement;
- M8 - The Guidelines sentence calls for incarceration but the offender cannot be adequately protected or treated in any available prison facility;
- M9 - The consecutive/concurrent sentencing policy results in an excessively severe sentence; and
- M10 - Any other substantial and compelling basis, similar to those articulated in the Guidelines, to depart downward (mitigating “catchall” departure).

Table 8: Departure Reasons by Severity Group (2016)

Offense Severity Group	Aggravator 11	Mitigator 7	Mitigator 8	Mitigator 9	Mitigator 10	Total
M2		2				2
M3		1				1
M5		6	2			8
M6	4	6			10	20
M7	2			2	3	7
M8					2	2
M9					1	1
D2		1			2	3
D3				1	5	6
Total	6	16	2	3	23	50

Table 8 displays the compliant departure sentences occurring in 2016. In these cases, the sentencing judge imposed an outside-the-box sentence and utilized an appropriate departure factor. There was a decline in the number of compliant departures reported in 2016 (N=50) compared to 2015 (N=64).

There were 44 reported mitigating departures, wherein the Court imposed sentences below the recommended sentencing range and/or options. The most common mitigating departure principle cited was M10 (23 counts), which is the “catchall” mitigating departure principle. This departure factor was followed by M7 (16 counts), which is used when the offender provided substantial assistance to law enforcement. The prominence of judges utilizing “catchall” and “substantial assistance” to law enforcement downward departure factors has been consistent from 2010 to 2016. Of the 44 mitigating departure sentences imposed in 2016, 30 were dispositional departures where the total length of the sentence was within the in-the-box range, but the sentence type was not recommended in the defendant’s grid box.

Aggravating factors were recorded in six felony counts, all of which were for offenses in Master Groups 6 or 7. The “catchall” aggravating factor, A11, was the only aggravating departure factor cited in 2016. All of the above-the-box compliant departures sentenced in 2016 were the result of durational departures; none of the above-the-box compliant departure sentences were above the Guidelines in-the-box range. In each case, the offender was eligible for a prison, compliant long split, or short split sentence. The judge imposed an amount of time to be initially served

that was greater than six months (thus, not short split) but less than the in-the-box minimum sentence (thus, not a compliant long split or prison sentence).

In 2016, judges imposed outside-the-box sentences in 12 cases where the amount of time to be initially served was greater than six months but less than the in-the-box minimum sentence. As discussed in the preceding paragraph, six of those cases were classified as an aggravating departure because the time to be initially served was greater than six months allowed for a short split sentence. However, even though the remaining six departures were done in similar situations, the sentencing judge classified them as a mitigating departure because the time to be initially served was less than the in-the-box minimum. As a result of this observation, the Commission will begin to monitor how judges classify durational departures for short-split eligible sentences to ensure judicial consistency in the use and application of departure factors.

Figure 25 shows the lengths of the 14 durational downward departure sentences imposed in 2016. The mean durational departure length was 19 months; however this is skewed by one outlier, a 72 month downward departure.⁴⁷ After removing the outlier, the mean durational departure length was just over 11 months.

Figure 25: Compliant Departures - Months Below Guidelines Range (2016)

N=14



F. Non-Compliant Departures

A sentence is considered a non-compliant departure when the judge imposes an outside-the-box sentence without citing a departure principle. In 2016, there were 53 non-compliant departures representing 2.5% of initial felony counts sentenced, a decrease from 5% in 2016. Table 9 shows the frequency that non-compliant sentences were imposed in each OSG. It is worth noting that in 2016, no non-compliant sentences were imposed in the most severe grid boxes (Master Group 4 and higher).

⁴⁷ This was a mitigating factor 7 downward departure as a result of the offender's cooperation with the government.

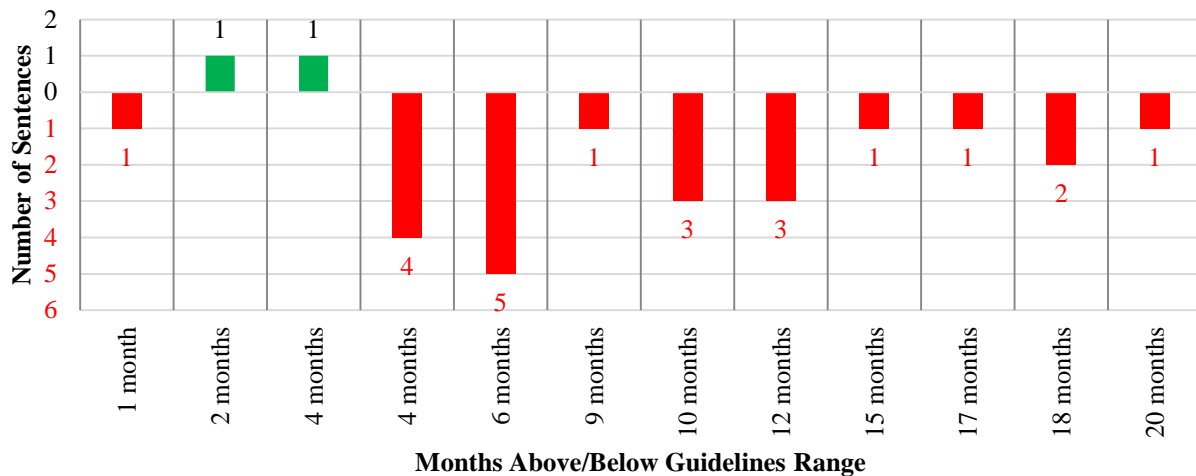
Table 9: Non-Compliant Sentences by Severity Group (2016)

Severity Group	N	Severity Group	N
M5	1	D2	4
M6	8	D3	7
M7	24	D4	1
M8	6		
M9	2		
Total Non-Compliant Sentences			53

Of the 53 non-compliant sentences in 2016, 51 were downward departures. The two sentences that received upward non-compliant sentences were durational departures above the Guidelines range (two and four months, respectively). Twenty-two of the non-compliant sentences represented durational departures below the in-the-box range (Figure 26).

Figure 26: Non-Compliant Sentences - Months Above and Below Guidelines Range (2016)

N=24



The remaining 29 non-compliant sentences were downward dispositional departures that received a sentence type not available in the defendant's grid box. Most non-compliant dispositional departures (25) were the result of a split sentence where time served was greater than six months (thus, not a short split) but less than the bottom of the box (thus, not a long split). Three were the result of a probation sentence in a prison only box and one was the result of a short split sentence in a prison only box.

Overall, the pattern of compliance appears stable. The majority of sentences imposed receive compliant in-the-box sentences. Moving forward, the Commission will continue to utilize the GRID System, in addition to Departure Forms, to identify and analyze compliance with the

Guidelines. One statistic the Commission is closely monitoring is the high number of catch-all mitigating departure factors (mitigating factor number 10) cited over the past several years. Mitigating factor number 10 has been the first or second most common departure factor over the past five years. However, because it is a catch-all, it does not specifically explain why the judge is departing in each specific case. The Commission will seek input from judges to determine if there is any commonality between cases where the Court utilizes this departure factor. Such commonality, if present, may indicate the need to study possible amendments to the departure factor list.

Appendix A

MASTER GRID

		Criminal History Score				
3 Points*	Ranking Group Most Common Offenses	0 to ½ A	¾ to 1¾ B	2 to 3¾ C	4 to 5¾ D	6 + E
	Group 1 1st degree murder w/armed 1st degree murder	360 - 720	360 - 720	360 - 720	360 - 720	360 +
	Group 2 2nd degree murder w/armed 2nd degree murder 1st degree sex abuse 1st degree sex abuse w/armed	144 - 288	156 - 300	168 - 312	180 - 324	192 +
	Group 3 Voluntary manslaughter w/armed 1st degree child sex abuse Carjacking while armed Assault with intent to kill w/armed Armed burglary I	90 - 180	102 - 192	114 - 204	126 - 216	138 +
	Group 4 Aggravated assault w/armed Voluntary manslaughter	48 - 120	60 - 132	72 - 144	84 - 156	96 +
	Group 5 Possession of firearm /CV Armed robbery Burglary I Obstruction of justice Assault with intent to kill	36 - 84	48 - 96	60 - 108	72 - 120	84 +
2 Points*	Group 6 ADW Robbery Aggravated assault 2nd degree child sex abuse Assault with intent to rob	18 - 60	24 - 66	30 - 72	36 - 78	42 +
	Group 7 Burglary II 3rd degree sex abuse Negligent homicide Attempt 2nd degree sex abuse Unlawful poss. of a firearm (prior fel.)	12 - 36	18 - 42	24 - 48	30 - 54	36 +
1 Point*	Group 8 Carrying a pistol (formerly CPWL) UUV Attempt robbery Attempt burglary 1st degree theft Assault w/significant bodily injury	6 - 24	10 - 28	14 - 32	18 - 36	22 +
	Group 9 Escape/prison breach BRA Receiving stolen property Forgery/uttering Fraud	1 - 12	3 - 16	5 - 20	7 - 24	9 +
*Criminal History Points for prior convictions in these groups.						
White/unshaded boxes – prison or compliant long split only.						
Dark shaded boxes – prison, compliant long split, or short split permissible.						
Light shaded boxes – prison, split, or probation permissible.						

Appendix B

DRUG GRID

		Criminal History Score				
	Ranking Group Most common offenses	0 to ½ A	¾ to 1¾ B	2 to 3¾ C	4 to 5¾ D	6 + E
2 Points*	Group 1 Distribution w/a (any drug) PWID w/a (any drug)	30-72	36-78	42-84	48-90	54+
1 Point*	Group 2 Distribution or PWID (schedule I or II narcotic/ abusive drugs)	12-30	16-36	20-42	24-48	28+
	Group 3 Distribution or PWID (except schedule I or II narcotic or abusive drugs) Attempt distribution or attempt PWID (schedule I or II narcotic/ abusive drugs) Possession of Liquid PCP	6-18	10-24	14-30	18-36	22+
¾ Point*	Group 4 Attempt distribution or attempt PWID (except schedule I or II narcotic or abusive drugs) Attempt possession of liquid PCP	3-12	5-16	7-20	9-24	11+
*Criminal History Points for prior convictions in these groups.						
White/unshaded boxes – prison or compliant long split only.						
Dark shaded boxes – prison, compliant long split, or short split permissible.						
Light shaded boxes – prison, split, or probation permissible.						

Appendix C

Group Offense Listings - The top five grouped offenses are comprised of the following crimes:

1. Robbery:

- A. Robbery -- while armed (W/A)
- B. Robbery
- C. Robbery -- Attempt while armed (W/A)
- D. Robbery -- Attempt
- E. Armed carjacking
- F. Unarmed carjacking

2. Drug, PWID+Dist and Attempted Drug Offenses:

- A. Drug – Dist. or PWID: Schedule I, II Narcotic and abusive drugs (heroin, cocaine, PCP, methamphetamine, etc.)
- B. Drug – Dist. or PWID: Schedule I, II, III Non-narcotic and non-abusive drugs (including marijuana -- 2nd offense or > ½ pound)
- C. Drug – Dist. or PWID: Schedule IV
- D. Drug -- Possession of Liquid PCP
- E. Drug – Dist. to Minors
- F. Dist. of a Controlled Substance -- Attempt
- G. Dist. of a Controlled Substance to Minors -- Attempt
- H. PWID -- Attempt
- I. Unlawful Possession of Liquid PCP -- Attempt

3. Assault:

- A. Aggravated Assault while armed (W/A)
- B. Aggravated Assault
- C. Aggravated Assault -- Attempt
- D. Aggravated Assault Knowingly -- Grave Risk
- E. Assault with a Dangerous Weapon (ADW)
- F. Assault with a Dangerous Weapon (ADW) -- Gun
- G. Assault on Police Officer (APO) while armed (W/A)
- H. Assault on Police Officer (APO)
- I. Assault on Police Officer (APO) w/ deadly weapon -- 2nd+ offense or prior felony
- J. Assault with Intent to Kill or Poison while armed (W/A)
- K. Assault with Intent to Kill or Poison
- L. Assault with Intent to Rob while armed (W/A)
- M. Assault with Intent to Rob

- N. Assault with Intent to 1° or 2° Sex or Child Sex Abuse while armed (W/A)
- O. Assault with Intent to 1° or 2° Sex or Child Sex Abuse
- P. Assault with Intent to Commit any other Felony while armed (W/A)
- Q. Assault with Intent to Commit any other Felony
- R. Assault with Intent to Commit any other Offense
- S. Assault with Intent to Commit Mayhem while armed (W/A)
- T. Assault with Intent to Commit Mayhem
- U. Assault with Significant Injury
- V. Mayhem
- W. Threat to Kidnap or Injure a Person

4. Weapon:

- A. Carrying Pistol Without License (CPWL), Carrying Dangerous Weapon (CDW)
- B. Carrying Pistol Without License (CPWL), Carrying Dangerous Weapon (CDW)
- C. 2nd+ offense or after felony conviction
- D. Firearm, Presence in a Motor Vehicle Containing: Prior gun conviction or felony
- E. Firearm, Presence in a Motor Vehicle Containing
- F. Firearm, Unlawful Possession of by a person with a prior conviction > 1 yr
- G. Firearm, Unlawful Possession of by a person with a prior conviction > 1 yr and COV other than Conspiracy
- H. Firearm, Unlawful Possession of by others
- I. Possession of a Firearm During a Crime of Violence or Dangerous Offense
- J. Possession of a Prohibited Weapon
- K. Unlawful Possession of a Firearm
 - Prior Crime of Violence
 - Intrafamily Offense
 - Order to Relinquish
 - Prior Conviction (Felon in Possession)

5. Other Offenses

- A. Any Other Felony
- B. Arson
- C. Bail Reform Act -Felony
- D. Blackmail
- E. Bribery
- F. Conspiracy
- G. Contempt -- Felony
- H. Contributing to the Delinquency of a Minor by a Person w/a Prior Conviction
- I. Credit Card Fraud -- Felony

- J. Criminal Street Gang Affiliation, Felony or Violent Misdemeanor
- K. Cruelty to Animals
- L. Cruelty to Children 1 °
- M. Cruelty to Children 1 ° -- Grave Risk
- N. Cruelty to Children 2 °
- O. Cruelty to Children Grave 2 ° -- Risk
- P. Destruction of Property Over \$200
- Q. Escape From DYRS
- R. Escape (From Officer)
- S. Extortion
- T. Felony Stalking
- U. Flee Law Enforcement Officer
- V. Fraud 1 ° \$1000 or More
- W. Fraud 2 ° \$1000 or More (Felony)
- X. Identity Theft 1 °
- Y. Insurance Fraud 2 °
- Z. Intimidating, Impeding, Interfering, Retaliating Against a Govt. Official or Employee of DC
- AA. Maintaining a Crack House
- BB. Maintaining a Place for Storage and Distribution of Narcotic and Abusive Drugs
- CC. Manufacture or Possession of a Weapon of Mass Destruction
- DD. Negligent Homicide --Felony
- EE. Obstructing Justice
 - Harassment-Reporting
 - Witness or Officer (Influence, Delay)
 - Due Administration
 - Harassment - Arrest
 - Harassment - Institution of Prosecution
 - Injury/Property Damage-Giving Information
 - Injury/Property Damage-Official Duty
 - Witness or Officer (Cause Absence)
- FF. Obtain Controlled Substance By Fraud
- GG. Offenses Committed During Release
- HH. Perjury
- II. Prison Breach
- JJ. Prisoner Escape
- KK. Stalking - Felony
- LL. Tampering With Physical Evidence
- MM. Unlawful Possession of Contraband Into Penal Institution

Appendix D

Guidelines Departure Factors

Aggravating Factors

- (1) There was deliberate cruelty to a victim or there was gratuitous violence inflicted upon a victim in a manner substantially beyond that normally associated with this offense.
- (2) A victim was particularly vulnerable due to age or reduced physical or mental capacity, which was known or should have been known to the offender, unless that vulnerability constituted an element of the offense of conviction.
- (3) A victim sustained a “devastating injury.” Devastating injury is defined as a physical or mental injury that results in one or more of the following:
 - (a) Permanent and substantial impairment of the person’s employment opportunity and/or lifestyle;
 - (b) Permanent, gross disfigurement; or
 - (c) Medical confinement and/or immobilization for a period of more than three months.
- (4) The crime committed or attempted was substantially premeditated, as evidenced by a high degree of planning or sophistication or planning over an extended period of time.
- (5) The defendant committed for hire or hired another to commit any one of the following offenses: Murder; Manslaughter; First-Degree Sexual Abuse; Kidnapping; Mayhem/Malicious Disfigurement; Aggravated Assault; Assault with intent to commit any of the foregoing; Assault with intent to kill; Assault with a Deadly Weapon; or Arson.
- (6) The offense was part of an enterprise significantly related to organized crime or high-level drug trafficking. This aggravating factor does not apply in cases charging only distribution or possession with intent to distribute a controlled substance where the defendant’s only connection to organized crime or high-level drug trafficking is street- level drug trafficking.
- (7) The defendant threatened, bribed, attempted to bribe, induced, or attempted to induce a victim, a member of the victim’s family, or a potential witness, or any other person to withhold truthful testimony or provide false testimony, or otherwise attempted to obstruct justice, unless the defendant is separately convicted of an offense that arises out of the same conduct.
- (8) The offense is a violation of Chapter 32 of Title 22 of the D.C. Official Code, which involves an intended or actual monetary loss substantially greater than what would normally be associated with the offense or any one or more of the following:
 - (a) The offense(s) involved multiple victims or multiple incidents per victim;
 - (b) The defendant has been involved in other conduct similar to the current offense(s) as evidenced by the findings of criminal, civil or administrative law proceedings or the imposition of professional sanctions; and/or
 - (c) The defendant used his or her position of confidence or fiduciary responsibility to facilitate the commission of the offense(s).

(9) The offender, in attempting to gain or while holding public office by appointment or election, betrayed the public trust by his or her unlawful conduct.

(10) The consecutive/concurrent sentencing policy results in a guideline sentence so lenient in relation to the seriousness of the offense and the history of the defendant that imposition of the guideline sentence would result in manifest injustice. A departure based solely on this factor shall not result in a sentence that exceeds the sentence that would result if all guideline sentences were consecutive.

(11) There is any other substantial and compelling basis, as articulated by the sentencing judge, comparable in gravity to those listed in 1 to 10 above, which aggravates substantially the seriousness of the offense or the defendant's culpability.

Note: Going to trial is not an aggravating factor and should not be used to go outside of the box.

Mitigating Factors

(1) A victim was an aggressor, initiator, willing participant in, or provoker of the incident to such a degree that the defendant's culpability is substantially less than that typically associated with the offense.

(2) Before detection in a crime other than a crime of violence, the defendant compensated or made a good faith effort to compensate the victim(s) for any damage or injury sustained.

(3) The defendant participated under duress, coercion, threat or compulsion insufficient to constitute a complete defense, but which significantly reduces the defendant's culpability.

(4) The offense was principally accomplished by another, and the defendant manifested extreme caution or sincere concern for the safety and well-being of a victim.

(5) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(6) The defendant's capacity to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired significantly, though not sufficiently to constitute a complete defense. Voluntary use of alcohol or other drugs should not be considered in relation to this mitigating factor.

(7) The defendant has provided substantial assistance to law enforcement in the detection or prosecution of other offenders, and departure for this reason does not demean the seriousness of the defendant's crime or create an unacceptable risk to the safety of the community.

(8) The guideline sentence calls for a prison sentence but, after consultation with corrections authorities, the court determines that the defendant, by reason of obvious and substantial mental or physical impairment or infirmity, cannot be adequately protected or treated in any available prison facility.

(9) The consecutive/concurrent sentencing policy results in a guideline sentence that is so excessive in relation to the seriousness of the offense and history of the defendant that imposition of the guideline sentence would result in manifest injustice. A departure based solely on this

factor shall not result in a sentence that is less than the sentence that would result if all guideline sentences were concurrent.

(10) There is any other substantial and compelling basis, as articulated by the sentencing judge, comparable in gravity to those listed in 1 to 9 above, which does not amount to a defense but which substantially mitigates the seriousness of the offense or the defendant's culpability.

Appendix E

Judicial Compliance Verification Process

The Seven-Step Process to Determine and Verify Judicial Compliance with the Guidelines

Step 1 - Identify Felony Offenses

The Sentencing Guidelines only apply to felony convictions; therefore, compliance is not calculated for misdemeanor offenses. The offense charge code within the GRID System is associated with each count in a case and can determine if the count is a felony or misdemeanor offense. If the GRID System does not recognize a charge code, the system will automatically generate a notification. Staff then reviews the offense and updates the system with the new charge code information. If the case contains at least one felony count, the process then proceeds to step 2.

Step 2 - Determine the Appropriate Grid Box

The GRID System computes compliance for every felony count sentenced. Compliance is determined automatically based upon the sentencing option available in the appropriate grid box. If a sentence falls within the recommended sentence type and range available in the applicable grid box, then the sentence is deemed compliant with the Guidelines. If the sentence does not fall within the recommended sentence type and range, the process then proceeds to step 3.

Step 3 - Determine if the Sentence Runs Concurrently with another Count

An otherwise non-compliant sentence may still be compliant with the Guidelines if it runs concurrent with a greater or equal compliant sentence for a count within the same case. For this to occur, both sentences must be eligible to run concurrently under the Guidelines.⁴⁸ In an eligible case containing multiple counts, if the non-compliant sentence runs concurrently with an equal or longer compliant sentence, then the otherwise non-compliant sentence is deemed to be a compliant outside-the-box sentence. The GRID System reclassifies the sentence as compliant because the longest sentence among concurrent counts determines the length of time a defendant will actually serve in prison. If the sentence does not run concurrent to another sentence or if the longest sentence is non-compliant, the process then proceeds to step 4.

Step 4 - Determine if the Sentence is the Result of an Appropriate Departure Factor or a Statutory Enhancement

⁴⁸ Chapter Six of the Guidelines Manual discusses which sentences may not run concurrently. For example, two crimes of violence committed against two separate people cannot run concurrent to each other. Similarly, two crimes of violence against one person but occurring as part of two separate events cannot run concurrently with each other.

There are several instances when an otherwise non-compliant sentence is nonetheless compliant with the Guidelines due to noted departure factors or statutory enhancements. When a sentencing judge imposes a non-compliant sentence but selects an enumerated departure reason, the sentence is deemed a compliant departure.⁴⁹ If the court records the departure factor, the GRID System will automatically mark the sentence as a compliant departure and record the reason for the departure. Sentences above the recommended Guidelines range due to a statutory enhancement are also deemed to be compliant if the sentence falls within the expanded range.⁵⁰ The GRID System incorporates enhancements into its calculations when they are reported by the Court in the IJIS 12.1 feed. Non-reported enhancements are verified and manually entered into the GRID System by Commission staff. If a departure cannot be determined or an enhancement does not apply, the process then proceeds to step 5.

Step 5 - Determine if the Sentence is the Result of a Special Circumstance or is Non-Guideline Applicable.

Certain special factors can change how a sentence is treated under the Guidelines:

Rule 11(c)(1)(C) plea bargains: The Guidelines and the GRID System classify all sentences following a Rule 11(c)(1)(C) plea compliant, regardless of whether the actual agreed upon sentence falls within the in-the-box sentence range and/or options. This is done because Rule 11(c)(1)(C) pleas are agreed to by the parties before the defendant's CH score was calculated.

Pleas and verdicts entered before June 14, 2004: The Guidelines do not apply to a sentence from a plea or verdict before June 14, 2004. Therefore, the GRID System automatically deems these sentences as "non-guideline applicable" sentences.

Indeterminate sentences: Most *Indeterminate sentences are deemed* "non-guideline applicable" sentences because The District of Columbia changed from an indeterminate to a determinate system of sentencing⁵¹ on August 5, 2000⁵². The Guidelines were designed primarily for the new determinate system. However, a small number of pleas or verdicts entered after June 14, 2004, are cases in which an indeterminate sentence must be imposed because the offense was committed before August 5, 2000. If the plea or verdict was entered on or after June 14, 2004, the Guidelines apply regardless of when the offense was committed – i.e., whether the offense

⁴⁹ See Appendix D for the full list of departure factors.

⁵⁰ Chapter Four and Appendix H of the Guidelines Manual address expanding the Guidelines range based upon a statutory enhancement. For example, if a gun offense is committed in a designated "gun-free zone," the upper limit of the Guidelines range is doubled.

⁵¹ Determinate sentences are sentences that consist of one number. For example, a sentence of "35 months incarceration" is a determinate sentence. An indeterminate sentence is a sentence given in a range. For example, a sentence of "30 to 40 months incarceration" is an indeterminate sentence.

⁵² See D.C. Code § 24-403.01 (sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000) (Formerly § 24-203.1).

was committed before or after August 5, 2000. Commission staff manually evaluates compliance for indeterminate sentences.

Remand sentences are labeled “Remand” by the GRID System and are not evaluated for initial Guidelines compliance. A remand is a case sent back to the sentencing court for re-sentencing from the Court of Appeals.

The GRID System also checks the compliance status of sentences following a probation revocation. However, for data analysis purposes, these sentences are separated and not used to calculate the overall initial compliance rate.⁵³

If one of the above conditions does not apply, the process then proceeds to step 6.

Step 6 - Verification of Non-Compliance

If, after completion of the five initial steps outlined above, the sentence still appears to be non-compliant, the offender’s case and CH score information is manually reviewed by Commission staff to verify that the data upon which the GRID System performed its evaluation is valid and that there are no data quality issues present. Simultaneously, compliance is rechecked using data from an alternate source: the CJCC JUSTIS System. If the sentence is still non-compliant after the information is verified, one final step must be taken.

Step 7 - Departure Forms

For sentences that still appear to be non-compliant after the previous six steps are completed, the Commission sends an electronic Departure Form to the sentencing judge to verify the sentencing data and to inquire as to whether the judge intended to impose a non-compliant sentence. The Commission has a follow-up process for all Departure Forms sent, allowing for a six week response period. If no response is received, the Commission then proceeds with the initial sentence and updates the GRID System accordingly. The Departure Form allows the judge to easily update or correct any information regarding the case. For example, if the defendant’s CH score was changed during the sentencing hearing, the judge may provide the updated CH score. The sentencing judge may also provide a reason for intentionally imposing a non-compliant sentence.

⁵³ Probation revocation sentences are not included in the overall Guidelines compliance rate because they would result in compliance being calculated twice for the same case and count, once when the sentence was initially imposed, and once again when probation is revoked.