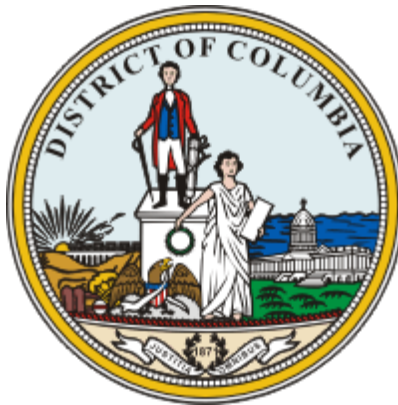




An Examination of Felony Assaults Sentenced in the District of Columbia in 2010



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DISTRICT OF COLUMBIA SENTENCING AND CRIMINAL CODE REVISION
COMMISSION

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

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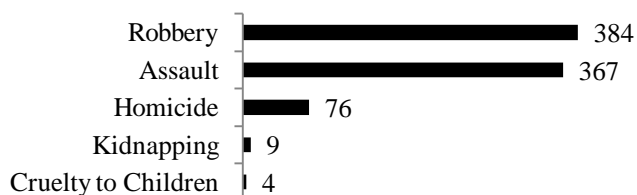
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During the 2010 calendar year, 363 sentences were imposed for felony-level assaults in the District of Columbia. These offenses are of particular concern given the harm inflicted on victims, and threat to safety in the community. Data analyzed by the Commission show that 299 offenders were responsible for the 363 assault counts, as numerous offenders were sentenced on multiple assault counts.¹ Assaults represented 43.4% of *violent felony*² counts sentenced in 2010 (n=836) and 8.4% of *all felony* counts sentenced (n=4,329). Of the violent felony offenses sentenced in 2010, assaults were among the most common, only second in number to robbery (Figure 1). As expected, the most serious violent offenses, murder and manslaughter, (collectively referred to as homicide) were significantly fewer in number than assaults.

This paper investigates offender characteristics and sentencing patterns for all types of felony assaults sentenced in 2010, with the purpose of determining how the D.C. Voluntary Sentencing Guidelines are applied to assault offenses in the District. The data utilized in this report include all felony sentences imposed in the District of Columbia between January 1 and December 31, 2010, regardless of when the initial offense occurred. This information was provided to the Commission by the Court Services and Offender Supervision Agency (CSOSA), and the District of Columbia Superior Court.

Figure 1: Violent Felony Offenses Sentenced in 2010, (N=836)



Overview of Assaults

Felony assault offenses are defined in the *D.C. Official Code § 22-401* through *§ 22-406*. While each statute under the encompassing term of “assault” contains its own unique elements, there are certain criteria present in all assaults:

- i. the offender injured³ (or attempted to injure) the victim with force or violence;

¹ A single case may be composed of numerous criminal counts—both felony and misdemeanor. Single offenders may be sentenced for multiple felony assault counts within a single case, and may even be sentenced for numerous cases within a single year. This paper thus specifies which unit of analysis (count, case, or offender) is being measured at a given time.

² For the purpose of this report, “violent” offenses refer to crimes involving the use, attempted use, or threatened use of physical force against another, or events involving serious potential risk of physical harm; however, this report treats violent crimes and property crimes as being mutually exclusive, and therefore does not include offenses such as arson, extortion, or burglary under the “violent” crime classification.

³ Per the *2010 Criminal Jury Instructions § 4.100*: in the case of assault, “injury” refers to any physical harm, including touching (if considered offensive to a reasonable person). *Barbara E. Bergman, Criminal Jury Instructions for the District of Columbia (Matthew Bender, Rev. Ed.)*.

- ii. s/he did so voluntarily, on purpose, and not by mistake or accident; and
- iii. at the time, the offender had the apparent ability to injure the complainant.

Additional elements are involved in cases of assaults that occur with weapons present or during the commission of another felony, and in cases of Aggravated Assault. An Aggravated Assault occurs if “circumstances manifesting extreme indifference to human life, [the offender] ... created a grave risk of serious bodily injury to [victim].”⁴ The present examination focuses specifically on assaults that involved serious injury, or risk thereof, and does not include cases that resulted in death (e.g. murder or manslaughter).

Eighteen different types of felony assault were sentenced in the District of Columbia in 2010. The two most common assaults sentenced were Assault with a Dangerous Weapon,⁵ and Assault with Significant Injury⁶ (Figure 2); together these two offenses accounted for 59.5% of all assaults sentenced. Other noteworthy sentencing trends involved counts of Aggravated Assaults (including attempted and while armed counts; 10.2%), and felony assaults directed at law enforcement officials (8.8%).

Additionally, half of all assault charges sentenced in 2010 occurred while the offender was armed.⁷ The most common weapons used in felony assaults in the District of Columbia included firearms and knives, although one case reported the use of a glass bottle as a weapon. Victims of both armed and unarmed assaults experienced a varied range of injuries including stab wounds, broken bones, gunshot wounds, lacerations, and bite wounds.

Guidelines for Sentencing Assaults

The D.C. Voluntary Sentencing Guidelines are a comprehensive structured system that provides felony sentencing recommendations based on an offender’s criminal history and the severity of his/her offense. Conformity to the Guidelines begins with identifying the appropriate sentencing box for a particular felony offense on the Master Grid or the Drug Grid.⁸ Each box reflects the intersection of the Offense Severity Group for the crime and the criminal history score of the

⁴ *Barbara E. Bergman, Criminal Jury Instructions for the District of Columbia (Matthew Bender, Rev. Ed.)*.

⁵ Per the *2010 Criminal Jury Instructions § 4.101*: an object is considered a dangerous weapon if it designed to be used, actually used, or threatened to be used, in a manner likely to produce death or serious bodily injury. Voluntarily pointing a dangerous weapon at another person in a threatening manner, or voluntarily using it in a way that would reasonably create in the other person a fear of immediate injury, would be an assault with a dangerous weapon.

⁶ Per the *2010 Criminal Jury Instructions §§ 4.102, 4.103*: “Significant injury” is defined as an injury that requires hospitalization or immediate medical attention. See also D.C. Code § 22-404(a)(2). This is different than the standard for Aggravated Assault which involves “serious bodily injury” or an injury that involves unconsciousness, extreme physical pain, protracted and obvious disfigurement, protracted loss or impairment of the function of a bodily member, organ or mental faculty or a substantial risk of death. See *Nixon v. U.S.*, 730 A.2d 145, 150 (D.C. 1999). Assault with Significant Injury is also referred to as “Felony Assault.”

⁷ Armed assaults were identified for 182 counts by “while armed” and “with a dangerous weapon” distinctions; it is possible that other offenses also occurred with a weapon, but the weapon offense was charged separately.

⁸ All felony assault offenses with Offense Severity Group rankings are found on the Master Grid.

offender. The Offense Severity Group for each conviction by plea or verdict is determined by its ranking within the Guidelines, which group felony offenses according to their severity level (the more serious an offense, the lower the severity group number). The criminal history score is determined by a series of Guidelines rules, which primarily account for the type, number, and severity of prior convictions and also the length of time between the imposition or expiration of the offender's last sentence and the commission of the instant offense.⁹

Based upon Offense Severity Group, the most serious assaults sentenced in 2010 were 14 counts of Assault with Intent to Kill While Armed, while the least serious assaults involved 150 counts ranked in Master Group 8. Among the least serious assaults sentenced were Assault with Significant Injury, and various forms of Attempted Assault (Figure 2). The majority of assaults sentenced fell into the Master Group 6 (41.3%) and Master Group 8 (34.7%) Offense Severity Groups. Thus, although assault offenses may be ranked as high as a "M3," the majority of assault counts sentenced actually fell into the lower half of the Master Grid Offense Severity Groups.

⁹ Specific provisions governing Offense Severity Groups and criminal history scoring under the Guidelines can be found in the *Voluntary Sentencing Guidelines Manual*, available at <http://sentencing.dc.gov>.

Figure 2: FY 2010 Assault Offender Characteristics,¹⁰ by Count

	Severity Group	Number of Counts	Gender (N)			Race (N)			Sentence Type (N)			Mean Age
			Male	Female	Other/Unknown	Black	White	Unknown/Other	Prison	Probation	Short Split	
Assault with Intent to Kill While Armed	M3	14	14	0	0	14	0	0	14*	0	0	20.80
Aggravated Assault While Armed	M4	22	21	1	0	21	1	0	22*	0	0	25.15
Assault with Intent to Commit 1° or 2° Sex Abuse While Armed	M5	2	2	0	0	2	0	0	2*	0	0	38.33
Assault with Intent to Kill	M5	8	8	0	0	8	0	0	8*	0	0	27.53
Assault with Intent to Rob While Armed	M5	8	8	0	0	8	0	0	8*	0	0	27.82
Malicious Disfigurement While Armed	M5	1	1	0	0	1	0	0	1*	0	0	21.31
Assault on a Police Officer While Armed	M5	8	6	2	0	8	0	0	6	2	0	27.92
Aggravated Assault	M6	14	12	2	0	14	0	0	12	1	1	31.74
Assault with a Dangerous Weapon	M6	117	106	10	1	115	2	0	103	4	10	28.69
Assault with Intent to Commit Child Sex Abuse	M6	1	1	0	0	1	0	0	1*	0	0	29.09
Assault with Intent to Commit 1° or 2° Sex Abuse	M6	1	1	0	0	1	0	0	1*	0	0	26.55
Assault with Intent to Rob	M6	16	16	0	0	16	0	0	16*	0	0	22.24
Malicious Disfigurement	M6	1	1	0	0	1	0	0	1*	0	0	44.51
Assault on a Police Officer	M7	24	21	2	1	24	0	0	21	3	0	29.29
Assault with Significant Injury	M8	99	80	19	0	93	5	1	67	17	15	30.59
Attempted Aggravated Assault	M8	1	1	0	0	1	0	0	1*	0	0	42.9
Attempted Assault with a Dangerous Weapon	M8	11	10	1	0	11	0	0	7	3	1	31.97
Attempted Assault with Intent to Kill	M8	15	13	2	0	13	2	0	7	8	0	32.73
Total		363	322	39	2	352	10	1	298	38	27	28.87

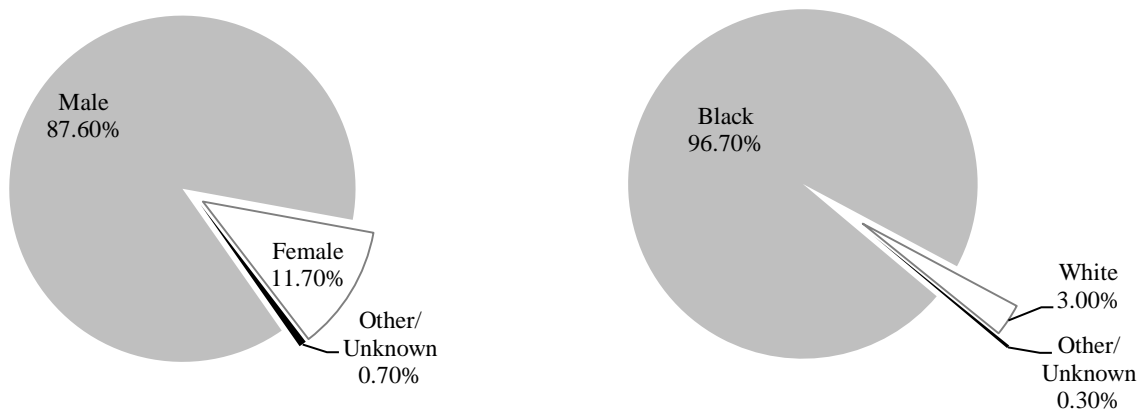
¹⁰ Offenses on the table are ordered by Offense Severity Group, with the most serious offenses listed first.

* 100% of counts for this offense were sentenced to prison in 2010.

Sentenced Assault Offenders

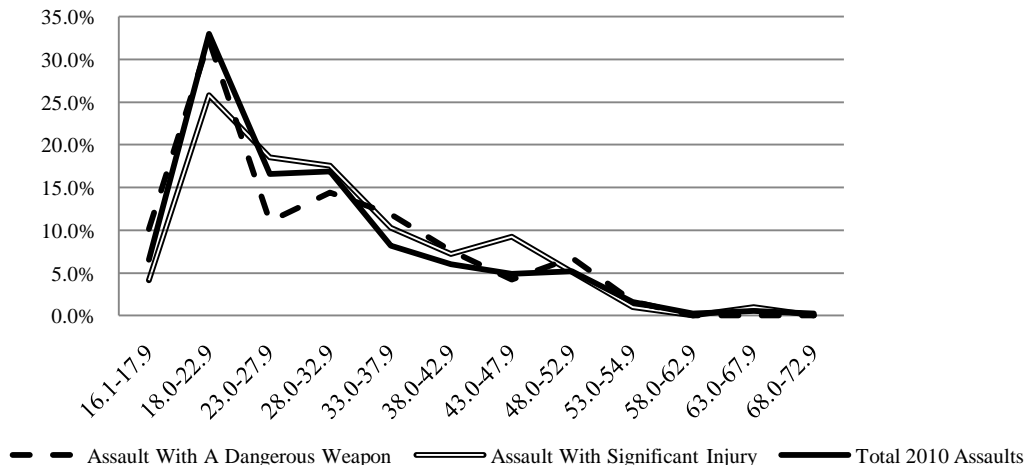
The overwhelming majority of felony assault offenders sentenced in 2010 were male (87.6%) and Black (96.7%), thus it follows that 84.3% of assault offenders were Black males (n=252). This is consistent with the overall 2010 D.C. felony sentencing trends, as Black males (n=2,496) accounted for 82.6% of all felony sentences imposed. The percent of female offenders sentenced for felony assaults was 1.7 percentage points less than the percent female for all felony offenders.

Figure 3: Race and Gender of Assault Offenders in 2010



The most frequent age category for an individual sentenced for an assault charge was between 18.0 and 22.9; this trend was also consistent for the two most common types of assault: Assault with a Dangerous Weapon, and Assault with Significant Injury (Figure 4). The average age of all assault offenders was 28.87 (Figure 2, page 3), which is higher than the most common age range due to the absence of a maximum age ceiling. However, following the 18.0 to 22.9 age group, there is a drastic drop-off in the percent of felony assault sentences for all offenders, as well as the two most common types of assaults.

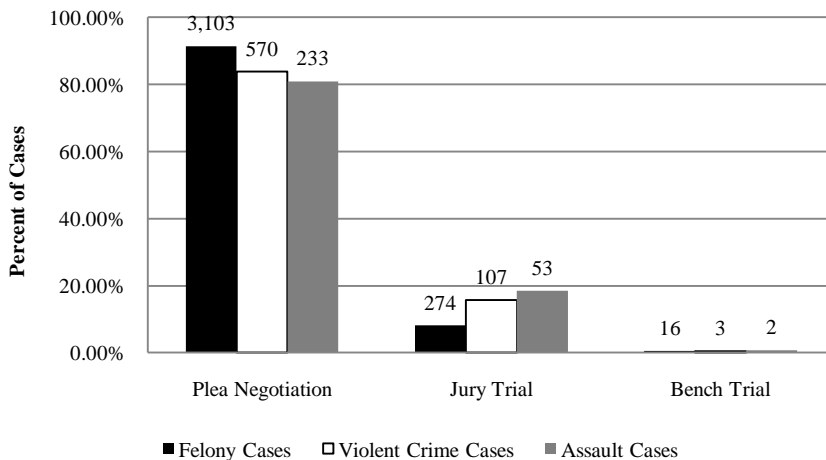
Figure 4: Age of Offenders for Most Common Assaults Sentenced in 2010



Types of Assault Dispositions

Consistent with overall felony and violent crime disposition patterns, the majority of felony assault cases sentenced were the result of plea negotiations. However, the rate of jury trials for felony assault cases was 10 percentage points higher than was typical for all felonies in general. Assault cases were also about 3 percentage points more likely to experience a jury trial than was seen for all violent felony cases. It is not possible to do a comparison of bench trials across the three groups in Figure 5, given how infrequently they occurred.

Figure 5: Distribution of Trial Dispositions in 2010, by Case



Types of Sentences

Consistent with both violent crime and total felony sentencing trends, the majority of convicted assault counts resulted in the imposition of a prison sentence. Short split sentences¹¹ were the least common for all felony offenses, as well as for violent crimes, and assaults. Not surprisingly, incarceration rates were higher for both violent crime and felony assault counts when compared to overall felony sentencing patterns for 2010. The “Felony Cases” category experienced a higher rate of probation sentences than both Violent Crime and Assault Cases. This difference is likely due to the high volume of probation imposed for felony drug offenses (34.1%), which are not included in the other two groups. Additionally, 11 of the 18 different types of felony assaults sentenced in 2010 resulted in prison sentences being imposed 100% of the time (Figure 2, page 3).

¹¹ Short split sentences are defined as a brief period of incarceration (six months or less) followed by probation.

Figure 6: Distribution of 2010 Assault Counts on the Master Grid¹²

Ranking Group	Sentence Type	Criminal History Score					Total
		0 to 0.5 A	0.75 to 1.75 B	2.0 to 3.75 C	4.0 to 5.75 D	6.0+ E	
Group 1							0
Group 2							0
Group 3	Prison	5	4	4			13
Group 4	Prison	6	7	3	3	1	20
Group 5	Prison	4	5	1		5	15
Group 6	Prison	36	37	28	8	10	119
	Short Split	11	1				12
	Probation	1					1
Group 7	Prison	1					1
Group 8	Prison	24	22	24	6	5	81
	Short Split	8	6	1			15
	Probation	20	4	2			26
Group 9							0
Total		116	86	63	17	21	303 ¹³

Of the 48 offenders sentenced for Master Group 6 offenses who qualified for short split sentences based on their criminal history score, 75% received prison sentences. Similarly, 63% of offenders with Master Group 8 offenses who qualified for probation and/or short split sentences received prison. Thus it appears that assault counts result in prison sentences more often than not, even when other options are permissible.

The average length of incarceration for felony assault counts was 50.15 months, with a median sentence length of 30 months for prison sentences. These sentence lengths are slightly lower than sentence lengths for *all* violent crimes, which had average and median prison sentences of 64.9 and 33.0 months, respectively. This difference is the result of the highest assault Offense Severity Group being ranked on Master Group 3 (Assault with Intent to Kill While Armed), which is lower than the highest offense group for all violent crimes is Master Group 1 (First Degree Murder).

Compliance with the Guidelines

Judicial compliance with the District’s Voluntary Sentencing Guidelines appears to be exceptionally high when sentencing felony assaults. Of the 303 counts of felony assault for which criminal history scores were available, 297 had sentences that were both durationally and

¹² White/unshaded boxes – prison only

Dark shaded boxes – prison or short split permissible

Light shaded boxes – prison, short split, or probation permissible

¹³ Although 363 sentences were imposed for felony assault sentences in 2010, criminal history information was only available for 303.

dispositionally compliant¹⁴ or utilized an authorized aggravating or mitigating departure factor. Thus, for felony assault cases, at least 98% of the 303 counts with criminal history scores followed the Guidelines.¹⁵

Of the four counts that were sentenced using an authorized departure factor, Mitigating Factor #10¹⁶ was used for three counts. This specific departure factor results in a sentence that is below the designated range. The circumstances surrounding the three cases for which this factor was applied were all different, and included the offenders' rehabilitative efforts, over-representation of criminal history, and the role played by other offenders. Aggravating Factor #3¹⁷ was used once in the case of a devastating injury, and resulted in a sentence that was above the Guidelines' designated sentence range.

Comparison to Other Urban Regions

In general, felony assault sentencing trends are consistent with overall felony sentencing practices in the District of Columbia for 2010, as well as with felony assault sentencing trends in other large urban counties throughout the United States, as reported by the Bureau of Justice Statistics (BJS).¹⁸ Assaults comprised 8.5% of all felony counts sentenced in the District in 2010, which is fairly consistent with the 10.1 to 12.0% of all lead charges nationwide. In large urban counties 76% of felony assault convictions resulted in incarceration; D.C. assault offenders were incarcerated at a higher rate, with 82% of counts receiving prison sentences. Almost all assault offenders in the District were under the age of 30, which is slightly below the nationwide average of 32.0 years of age.

Focus on Young Offenders

Thirteen individual offenders were in the youngest age group (16.1-17.9) and were responsible for a total of 24 felony assault charges. These offenses involved twelve counts of Assault with a Dangerous Weapon, four counts of both Assault with Significant Injury and Assault with intent to Kill While Armed, three counts of Aggravated Assault While Armed, and one count of Assault with Intent to Rob While Armed. Ten of the thirteen cases were disposed of by plea negotiation, while the remaining three involved jury trials. All thirteen youths were incarcerated, with imprisonment ranging from 8 to 156 months, with an average sentence length of 49.58 months.

¹⁴ Compliance with the D.C. Voluntary Sentencing Guidelines requires that a sentence fall within the range stated in the appropriate grid box, and follow the rules depicted by the box shading. Sentences are also considered compliant if they fall outside the grid box, but the judge provides an aggravating or mitigating reason for doing so.

¹⁵ Compliance is unknown for four counts which were determined to be outside the box, as Compliance Surveys were not returned by the sentencing judge; 98% is a conservative figure, as it assumes non-compliance for the unknown counts.

¹⁶ Mitigating Factor #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."

¹⁷ Aggravating Factor #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."

¹⁸ Cohen, T.H., & Kyckelhahn, T. (2010), Felony Defendants in Large Urban Counties, 2006. *Bureau of Justice Statistics Bulletin*, NCJ 228944, 1-41.

Key Findings

- *Felony assaults are common among violent offenses sentenced in the District, and are typically Assault with a Dangerous Weapon or Assault with Significant Injuries. More than half of these offenses occur while the offender is armed.*
- *Assault offenders sentenced most frequently in the District are Black males in their twenties; the majority of these offenders are sentenced to prison, upon conviction.*
- *Judicial compliance is exceptionally high with at least 98% of felony assault offenses sentenced in accordance with the D.C. Voluntary Sentencing Guidelines.*

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